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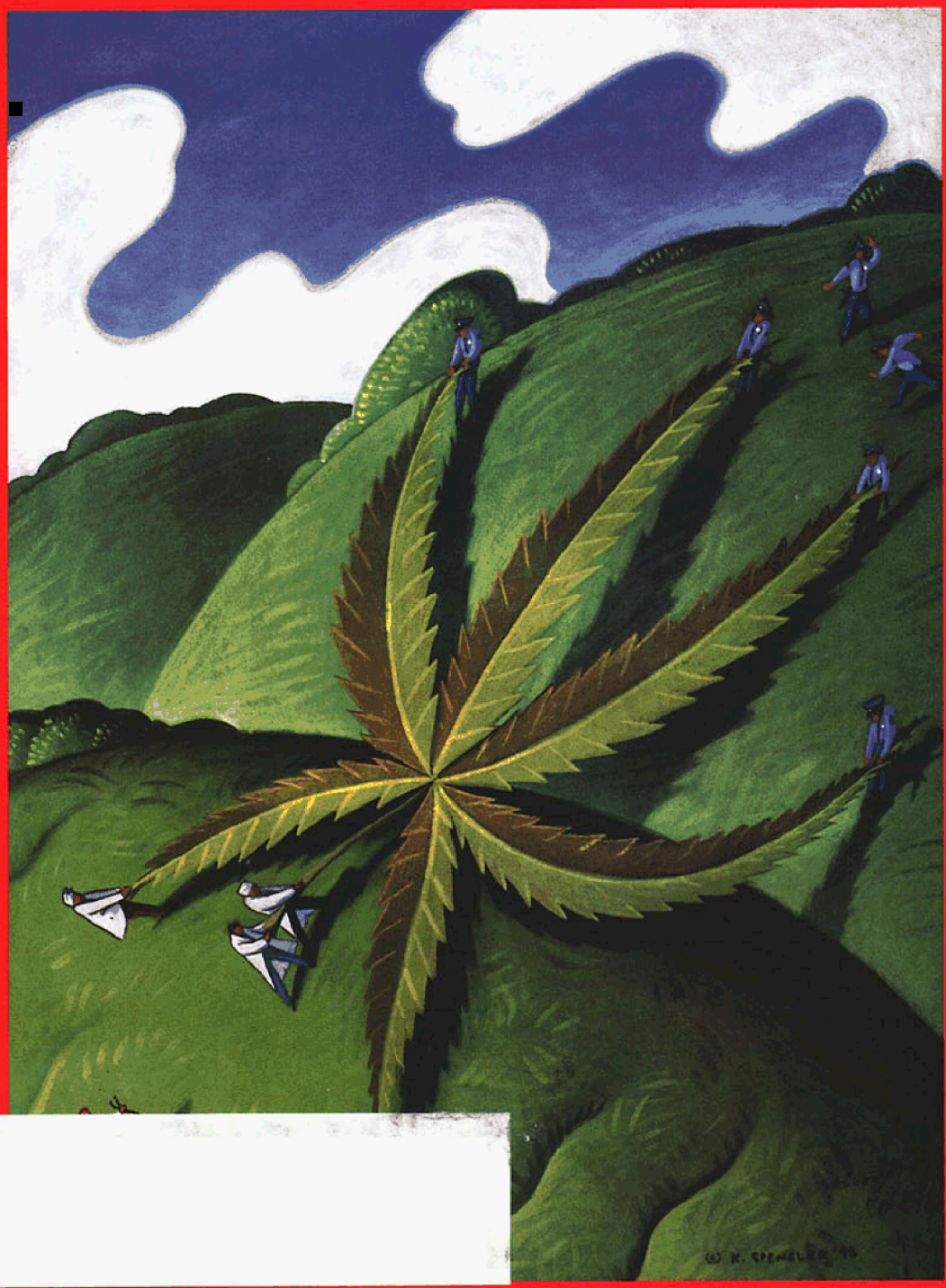

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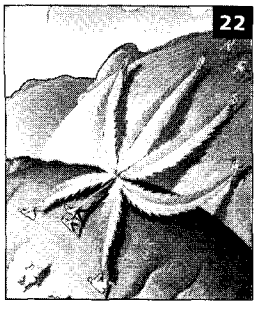

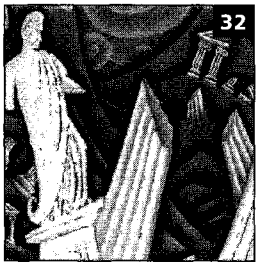

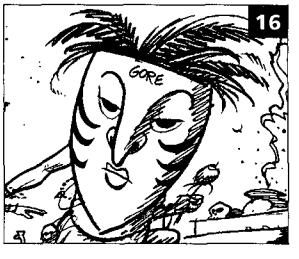

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Let's Pretend

The "pageant" masquerading as environmental debate

By Virginia Postrel

There is something weirdly appropriate about beginning the Unabomber trial a few weeks after the Kyoto summit to craft a global-warming treaty.

The shack-dwelling, potato-grubbing hermit Theodore Kaczynski seems to have nothing in common, of course, with the jet-setting power brokers who descended on one of the world's most beautiful cities to debate (or agitate for) treaty provisions. Lifestyle aside, the Unabomber "manifesto," whose publication led to Kaczynski's arrest, hardly even mentions global warming. And while pundits took Kyoto with chin-pulling seriousness, there is near-universal agreement that it is irrational, and possibly immoral, to treat Kaczynski's ideas as anything other than the deranged rantings of a lunatic.

But we can in fact learn a lot about the state of the environmental debate by taking both Kyoto and Kaczynski seriously. And the most important thing we learn is that much of the time that debate is deeply dishonest and quite detached from logic and reality. It is less a debate than—as Robert DeNiro's character in *Wag the Dog* might put it—a *pageant*, something staged for the masses and assumed by its participants to be unreal. Except that this pageant has real-world consequences.

Consider Kaczynski. Over his objections, his lawyers tried to mount a "diminished capacity" defense, arguing that he was too mentally ill to form the legally required intent for murder. Having failed to exclude mountains of evidence, notably Kaczynski's written musings on bombings past and planned, they had no other defense. Many experts opined that the "he's too crazy to be culpable" approach just might work, even after Kaczynski blocked psychiatric witnesses.

Family members and other lay witnesses should be enough, said Leslie Abramson, the lawyer famous for defending the Menendez brothers. "The point they want to make is that it's obvious he's crazy," Abramson told the Associated Press. "You don't need an expert to say that....You have to show the jury he's extremely weird. Look at his lifestyle....He lived a hard and unnatural life."

This sentiment has been echoed again and again: Kaczynski's lifestyle alone proves he's too nuts to be responsible for murders and maimings. As Reuters correspondent Michael Miller put it: "Legal analysts say the defense's strongest argument that their client is mad may be the 12-by-10 foot...plywood shack without electricity or running water and with only a small wood stove to stave off the bitter cold of the Rocky Mountain winters.... Experts expect the defense to argue that only a madman would voluntarily endure those conditions, cycling five miles (8 km) through snowdrifts to get provisions from the nearest town and roasting squirrels and porcupines for supper."

This argument is very, very interesting. It says that someone who writes lucidly, who cared for himself for two decades with virtually no outside aid, and who articulates the planning of his crimes and the reasons behind them cannot possibly be sane *simply because he lives the way popular, respected, best-selling environmental theorists say we should all live.*

Unlike the president of the United States and a wide range of statist pundits, I do not believe that peaceful people are implicated in the violent deeds of strangers who happen to share some of their political views. (See "Fighting Words," July 1995, available at www.reason.com/9507/VIPedit.jul.html.) E.F. Schumacher never blew anyone up to enforce the message that small is beautiful. Jeremy Rifkin files lawsuits; he does not murder scientists. Kirkpatrick Sale, the Unabomber's leading rationalizer, stops at apologizing for other people's violence; he doesn't do the deeds himself. Even as a soldier in Vietnam, Al Gore wielded only a pen and notebook.

Political theory is not violence. But neither is it supposed to be escapist fantasy. When theorists like Schumacher, Rifkin, and Sale write books celebrating a world without trade, specialization, or industry, they presumably intend for their ideas to be taken seriously. In *Earth in the Balance*, Gore says his message is urgent, that "we must make the rescue of the environment the central organizing principle for civilization....Minor shifts in policy, marginal adjustments in ongoing programs, moderate improvements in laws and regulations, rhetoric offered in lieu of genuine change—these are all forms of appeasement, designed to satisfy the public's desire to believe that sacrifice, struggle, and a wrenching transformation of society will not be necessary." This imperative statement certainly sounds serious.

When Gore writes that "we have been so seduced by industrial civilization's promise to make our lives comfortable that we allow the synthetic routines of modern life to soothe us in an inauthentic world of our own making," the clear implication is that there is something wrong. When he continues, "Life can be easy, we assure ourselves. We need not suffer the heat or the cold; we need not sow or reap or hunt and gather," the intended irony is obvious. We are, Gore suggests, deeply deluded. This drive to overcome the pains inflicted by nature is a sign of "a laziness in our spirit." We should live differently, more authentically. We should live more like Ted Kaczynski.

Gore is not alone in that suggestion—or in his failure to confront its implications. Like *Earth in the Balance*, Bill McKibben's *The End of Nature* was a best-seller. Describing the world he'd like to see, McKibben imagines smaller wardrobes and communal washing machines: "If we reached that point—the point where great closetfuls of clothes seemed slightly absurd—*unnatural*—then we might have begun to climb down from the tottering perch where we currently cling." Obvi-

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ously the man of the house, McKibben fails to realize that fewer clothes mean *more* washing, unless you plan to go the stinky Kaczynski route.

A similar failure to connect the dots marks another McKibben observation: "My wife and I just acquired a fax machine...on the premise that it makes for graceful, environmentally sound communication....But if communication prospered in a humbler world, transportation might well wither, as people began to live closer not only to their work but to their food supply. Oranges all year round —oranges at any season in the northern latitudes—might prove ambitious beyond our means." A world without the transportation for out-of-season oranges is unlikely to deliver fax machines to writers in the Adirondack Mountains. Electronic equipment does not grow on trees.

Such fantasies would be of no more consequence than bodice-ripping romance novels if their authors would stick to peddling pornography for puritanical intellectuals, and their readers would understand it as mere entertainment. A world without consequences or cause and effect makes for many a pleasurable fantasy, and even greens like to have fun. Unfortunately, however, these particular pageants get played out on a world stage, where laws get made and people's real lives are at stake.

That is where Kyoto comes in. The summit was supposedly about something real—reducing global warming. But it looked an awful lot like a pageant.

For starters, there was a lot of explicit pageantry: To portray fossil fuels as "the technology of the past," Greenpeace erected a 20-foot metal dinosaur made from old cars, gasoline pumps, and other detritus. Another green group seized a Kyoto gas station. Ice-sculpture penguins melted in the sun. And, of course, Gore jetted in at the last possible moment, playing Superman as negotiations broke down. Negotiators then proceeded to work without sleep for several days, a showy way to make good feature stories and bad policy.

No one seemed much interested in the scientific questions, many of which are still in play. You could pretty much predict what people would say about science by finding out what they thought about completely unrelated questions: about markets, about industrial civilization, about America, about oranges in the winter.

The whole thing was very disquieting, a struggle between competing world views decked out as a way of solving a technical problem. The diplomats provided the technocratic cover, pretending that "sacrifice, struggle, and a wrenching transformation of society will not be necessary." All the while, Greenpeace and its fossil-fuel enemies were arguing the opposite point.

In the end, the sleepless delegates came up with a treaty whose consequences are murky, to be determined in a later round of negotiations and, as important, by the actions of the U.S. Senate. The treaty takes the advice of economists, who, accepting the goal as problem solving rather than social transformation, recommended a trading program that lets advanced countries buy emissions credits from less-developed nations. The idea is that it's more efficient to bring well-understood emissions-reducing equipment to, say, China, which is still using highly polluting technologies, than it is to invent brand-new equipment and processes in the United States. This practical approach was immediately denounced as "immoral" by environmental puritans and anti-market technocrats.

Even on economics, a lot of pretending went on in Kyoto. It was common to hear that the United States can cut carbon-dioxide emissions without hurting economic growth, that the benefits might even outweigh the costs. The rest of the story was omitted: Those rosy projections assume a carbon tax to deter emissions *offset by a huge reduction in taxes on capital.* Dale Jorgenson, the Harvard economist who rallied economists to the no-cost side, writes that "reducing the tax burden on capital by substituting other forms of taxation would produce similar [growth] effects with no effect on emissions of greenhouse gases." In other words, cutting greenhouse gases is in fact expensive. The whole cost-free approach depends on a tax cut the Clinton administration would never in a million years support.

Of course, quibbles like these don't matter when you're putting on a pageant. The whole point is to look and sound good —to seem *concerned* about the *urgency* of the "environmental crisis." The last thing you want to do is take environmental rhetoric seriously. That would be crazy.

Classification Struggle

Racial divisions at the White House

By Rick Henderson

"I graduated from a segregated high school seven years after President Eisenhower integrated Little Rock Central High School," President Clinton said in a July 1995 speech. "My experiences with discrimination are rooted in the South and in the legacy slavery left."

As the White House orchestrates its National Initiative on Race, those sentences explain much about Bill Clinton's vision of the role of government in fostering race relations in America. Clinton's view was born at the end of the Jim Crow South, at a time in which Southern liberals, black and white, offered an integrationist vision that saw us all living in a single, interracial community, with the federal government fostering that goal by actively breaking down state and local segregationist policies. The optimism of Clinton's integrationist vision still holds much appeal.

Clinton's vision, while inspiring, is unfortunately frozen in place and time, in the Arkansas of the 1950s, when federal troops had to be mobilized to force local government officials to uphold citizens' constitutional rights. At that time, the barriers black Americans faced in the South were overt—segregated schools, workplaces, restaurants, and parks. The brightest, most talented, and most energetic African Americans were shut out of mainstream society by a dehumanizing legal system that had to be forcibly overhauled and continually monitored.

Much has improved since then, especially for the burgeoning black middle and upper classes. Even so, many contemporary African Americans must overcome more subtle obstacles, from wretched public schools to welfare dependency to a tax and regulatory system (and a failed drug war) that makes it oh-too-tempting for young persons to live on the fringes of everyday life. Scholars such as Richard Epstein, Thomas Sowell, and Walter Williams have convincingly argued that many of the remaining barriers black Americans face were erected by the same government that was perceived as a liberating force not so long ago. A primary focus of the Institute for Justice, a public-interest law firm in Washington, D.C., is suing governments that won't remove these impediments. The president's uncompromisingly benign view of government as savior for black America does not match today's reality.

Even so, the president's outlook is optimistic, and it offers opportunities for honest discussions with his critics, as the December White House "outreach" meeting with opponents of racial preferences suggests. (For a transcript of that meeting, see www.whitehouse.gov/WH/New/html/19971223-7462.html.) Another, far less optimistic vision of race relations is on display in the White House, however. It comes from Vice President Gore.

"If you lived in a community that was 50 percent white, 50 percent black," Gore asked at the meeting, "and for a variety of historic reasons the level of income, educational attainment, and so forth was lower among the blacks in that community, and the police force was 100 percent white...do you think that the community would be justified in making affirmative action efforts to open up a lot more positions on the police force?"

The vice president invokes an extreme case of racial exclusion in a local police department, one that may have been common a few decades ago but is certainly (because of both changing attitudes and affirmative action programs) nonexistent now. Most people would consider the type of situation Gore suggests intolerable, or at least a curious way to promote confidence in a law enforcement agency. But notice how Gore engages in his own brand of racial classification, suggesting that individuals (in this case, police officers) are merely cogs in a wheel who exist to fill slots in some grand social scheme. Gore's view of enforcing "diversity" dominates the civil rights establishment these days, to the detriment of those who wish to improve race relations. Diversity proponents contend that as long as individuals voluntarily associate in ways that don't result in perfect racial and ethnic mixing, government has to step in. When diversity trumps all other values, there's no room for pluralism, individualism, or personal choice.

As Gore said in December, "people are prone to be with people like themselves, to hire people who look like themselves, to live near people who look like themselves. And yet in our society when we have this increasing diversity, we have a...national interest in helping to overcome this inherent vulnerability to prejudice."

On separate occasions during the meeting, quota opponents Ward Connerly, Linda Chavez, and Rep. Charles Canady (R-Fla.) decried the consequences that result when government sets different standards for persons because of their racial and ethnic origins. Each time, Gore broke into the discussion to say he disagrees with the critics of racial preferences —that, by implication, he sees nothing wrong with classifying persons entirely by their skin color or accepting lower performance from people simply because they have unusual last names or heavy accents.

Gore's vision of race relations, like Clinton's, is rooted in the civil rights past. But—as Gore stated repeatedly in December—he views racism as an intractable aspect of human nature that will always lead to the subjugation of the minority group. Yet he believes an elite class of planners is immune from this taint and should therefore be trusted with the power to enforce racial categories and allocate privileges accordingly. In the minds of diversity advocates, since racism can never be eradicated, its consequences must be managed through a mind-boggling array of preferences, set-asides, and quotas.

Until recently, the vice president hasn't said much about race relations, other than calling for businesses in enterprise zones to be wired to the Internet. His now-stated belief in endless head counting and ever-more-complicated plans to move people into the "correct" racial combinations ignores the dynamic processes by which racial and ethnic groups have historically been assimilated into the American community. Unlike the hopeful (if anachronistic) liberal-integrationist view held by Bill Clinton, Al Gore's "diversity" vision leads to perpetual meddling by social planners,

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ceaseless resentment by those who feel cheated by the system, and a never-ending divisiveness between individuals from different racial backgrounds.

Clinton's particular vision is very much a bottom-up view, generated from his lower-middle-class childhood in Arkansas and the grassroots vitality of the original civil rights movement. Such factors as rising interracial-marriage rates and the increasing equality of income levels among individuals of all races who have similar education levels strongly suggest we've advanced a great deal along that integrationist path since Bill Clinton was a boy.

The diversity vision, by contrast, is top-down, much more consistent with Al Gore's upbringing within the corridors of power in Washington, D.C. This top-down vision is exemplified in the policies proposed by the persons the administration selected to enforce the nation's civil rights laws: from former Assistant Attorney General Deval Patrick's refusal to eliminate race-based set-asides in federal contracts to current Acting Assistant Attorney General Bill Lann Lee's position that—in defiance of federal court decisions—he would not enforce the California Civil Rights Initiative. The diversity enforcers are less concerned about expanding access so that individuals can pursue their own dreams than they are in directing persons from above to fill boxes in some societal organization chart.

It was another white Southerner—Lyndon Johnson—who first invoked the metaphor of life as a track meet when talking about race. If some Americans entered the race with an unfair advantage, Johnson said, government should be able to give the disadvantaged a head start. This metaphor has become the motivating force behind the diversity vision of race relations, a view which requires a group of elites to constantly reconfigure the structure of the event and reposition the participants if the results don't match the elites' whims.

A more hopeful view of race relations acknowledges the evils of the past, appreciates how far we've come, and pushes us to look at people as human beings rather than members of arbitrary groups. It also recognizes that when government sorts individuals by skin color, it merely maintains and supports the type of prejudice the diversity crowd ostensibly abhors. ◆

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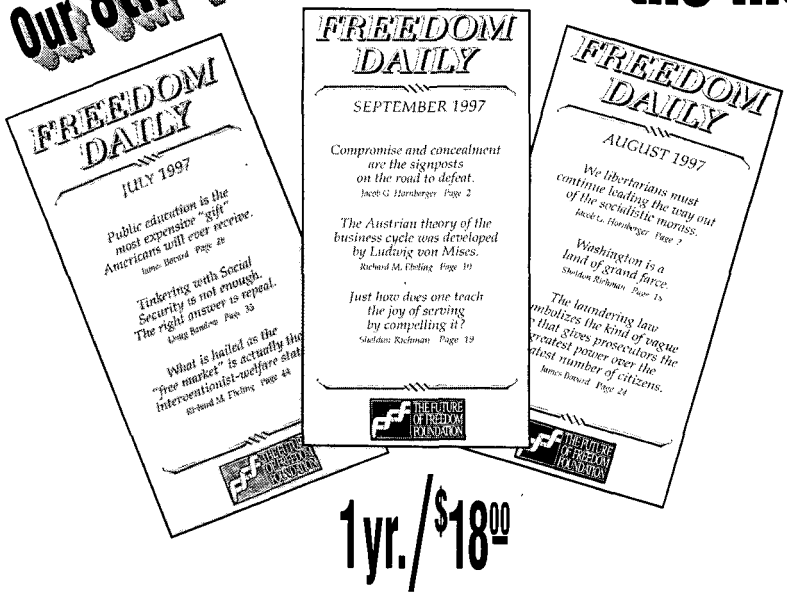

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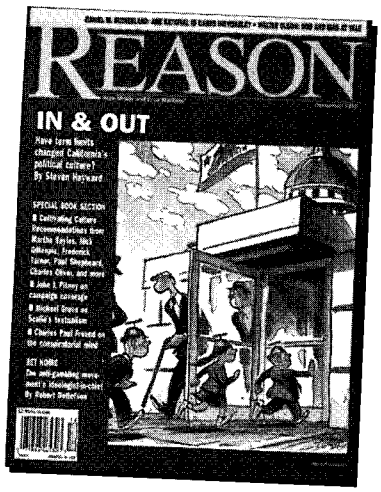

Take It to Term Limits

The reason Steven Hayward is lukewarm about term limits ("Same As The Old Boss," December) is captured in his claim that they "are no substitute for the changes in public opinion that would be necessary to shrink the size and scope of government." What happens when public opinion conflicts with congressional self-interest? There is overwhelming evidence that the public already wants a much smaller and less powerful government. A Democratic Leadership Council survey last November found 78 percent of voters agreeing that "the federal government has too much power." In 1973 only 32 percent agreed with the statement, "That government is best which governs least"; in 1996, 61 percent agreed.

Republicans and Democrats have the official government-funded political parties. The Supreme Court has sanctioned government discrimination against other parties. Incumbents of both parties are united in supporting large staffs and budgets for themselves, which lead to an average of $2 million in taxpayer money used for re-election by each incumbent in each two-year cycle. That's not counting the tens of millions in pork per district. Even those huge advantages could well be overcome if incumbents had not criminalized voluntary contributions of over $1,000 with the Federal Elections Commission and its speech regulation process.

Incumbents were not elected in free and open elections. Their interests as incumbent rulers conflict with the interests of ordinary citizens. An unpredictable, powerful, and profligate government enhances both their power and their invincibility on election day. In this corrupt environment, ordinary voting is futile. The term limits movement is promoting a new self-limit pledge to help voters separate career politicians from citizens and throw the careerists out of their stronghold in Congress.

Eric O'Keefe
Treasurer, U.S. Term Limits
Spring Green, WI

Steven Hayward makes a compelling case for term limits. However, he falls into the same trap as many statists—assuming that more government intervention is the solution, rather than the problem. Incumbents receive a government-provided advantage through unlimited mailings, newsletters, ability to gerrymander district lines, etc. The solution is to level the playing field by removing these costly privileges, rather than taking away the voters' right to choose the candidate who best represents their views.

The goal of term limits is not to have "fun" or to "cause paroxysms of outrage within the political class," as Mr. Hayward states. The goal is not even greater turnover in our legislatures. The appropriate goal is greater responsiveness from our elected officials. Term limits, by their nature, increase the percentage of lawmakers in office who cannot be re-elected, and therefore have no motivation to serve the voters.

In addition, as Hayward's article mentions, even an inexperienced legislature is clearly capable of passing intrusive legislation. Why throw out a legislator who has a proven record of limiting government authority and spending in exchange for an unproven, and in some cases far more statist, newcomer? Why do you want to take away my right to vote for the best representative instead of leveling the playing field so the best can win in a fair fight?

Finally, Hayward lets the electorate off the hook far too easily. No amount of campaign spending, no amount of free media or interest group support (short of outright fraud) can force an informed voter to flip one lever over another in the privacy of the voting booth. The Internet and other modern tools of communication put vast amounts of information at our fingertips. We cannot confuse a result we don't like with one caused by a broken system of government. As supporters of free markets, we have an obligation to sell the message of liberty—not just to re-rig the rules to favor our cause over our opponents'.

Mary Jo K. Baas
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Steven Hayward replies: There's just no pleasing some people. Mr. O'Keefe complains that I am "lukewarm" about term limits (true), while Ms. Baas thinks I make a "compelling" case in their favor. Yet both make essentially the same complaint: Incumbents enjoy unfair advantages. Both underestimate the cognitive dissonance of voters. It is true that voters say they favor smaller government, but there is good reason to suspect this is superficial. If it were broadly true that voters favor smaller government, how does O'Keefe explain why the public turned against Congress in the 1995 budget fight, when only a small reduction in government was proposed? My point is that in-

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cumbency isn't the main problem, but to the extent that incumbency contributes to big government, "leveling the playing field," as Baas suggests, won't go far enough in reducing the power of incumbency, for many of the reasons O'Keefe suggests (especially the pork barrel). Only term limits can do that effectively.

Lest Ye Be Judged

In his review of *A Matter of Interpretation: Federal Courts and the Law*, by Antonin Scalia ("Vexed by the Text," December), Michael Greve concludes that Justice Scalia's jurisprudence of "textualism" (or "originalism") "is good news for the Constitution—and, on the whole, for libertarians." Respectfully, I must register a dissent.

I give Justice Scalia his due as a defender of liberty provided he can find a textual nail to hang his judicial robe on. In the area of the Fifth Amendment's Takings Clause, Justice Scalia has brilliantly argued for the plain and literal meaning of the clause—that private property cannot be taken for public use without compensation. And in the area of free speech (again, a right specified in the First Amendment), he has sided with "liberal" justices, voting to protect cyberspace from federal regulation in the Communications Decency Act case and the right to burn the American flag in protest. (He cast the fifth vote to overturn laws prohibiting flag burning because they violated freedom of speech.)

But elsewhere, his "original intent" approach has often led him to the side of the state. If a right must be found in the literal text of the Constitution or Bill of Rights (or not at all), many liberties cease to exist. Justice Scalia, like his almost brother Robert Bork, is at bottom a legal positivist: No rights exist save those which are created by the state, and so, unless the state is constrained by the authority of its supreme constitution, its power is unlimited.

In a speech in October 1996 at the Catholic University School of Philosophy, Justice Scalia stated there is no "constitutional right to die" (a view later adopted by the Court in "right to die" cases this year), adding "all sorts of rights that clearly did not exist at the time of the Constitution have been held by the court and are thought by justices of the court to exist today." He has therefore opined that there is no right of privacy (the word doesn't appear in the Constitution), and hence the state may restrict a woman's access to abortion. There is likewise no constitutional protection for gay rights (where is homosexuality mentioned in the Bill of Rights?) and hence the state may prohibit homosexuality. Most libertarians would agree that liberty includes the right to control one's body, to end one's life, and to choose whom one sleeps with. Yet the theory of textualism provides no footing on which to argue for these rights on a constitutional basis.

The siren song of Scalia's textualism should not ensnare advocates of liberty. Its premise is fundamentally flawed: The Framers were not legal positivists. They believed, as good Enlightenment thinkers, that people held rights originally and independently of the state; that the state derived its authority from "the consent of the governed."

What was not delegated to the state was reserved to the people. The powers of the federal government were limited to those delegated to it. Hence the adoption of the Ninth Amendment, which is nonsense in the jurisprudence of textualism: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The essence of Justice Scalia's approach is to deny the existence of any fundamental right unless it is "enumerated" in the Bill of Rights. This stands the structure of the Bill of Rights on its head. Under a "literalist" approach, what unenumerated rights could have been "retained by the people"?

Justice Scalia's textualism applied to the Constitution gives birth to the very nightmare foreseen by Hamilton in Federalist No. 84. There he argued against the need for a Bill of Rights, for such an "enumeration" was not only "unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more [powers to the federal government] than were granted." By requiring every right to be specifically articulated, Justice Scalia gives the state carte blanche to claim "more [powers] than were granted" it.

If textualism triumphs as the jurisprudence of the next century, the scope of liberty under the Bill of Rights will diminish. In my view, the Living Constitution theory, while theoretically flawed, has at least helped keep intrusive government at bay during most of this century. Should it finally be discredited, the reins on the state will loosen even more. But this is not to say we should all become Living Constitutionalists as a matter of self-defense. The choice is not between an originalism that limits rights to an enumeration or a Living Constitution that knows no clear meaning for words; there is a third approach, all but ignored in the discourse of the Court, but which is truer to the Framer's beliefs: that rights precede government, not the other way around.

Don Erik Franzen
Topanga, CA

I'd be a lot more impressed with Justice Scalia's book if he didn't show signs of being dangerously out of touch. Looking to illustrate how Americans no longer value their liberties, he said, "So also, we value the right to bear arms less than did the Founders (who thought the right of self-defense to be absolutely fundamental), and there will be few tears shed if and when the Second Amendment is held to guarantee nothing more than the state National Guard."

Few tears shed, in a country where the National Rifle Association has 10 times the membership of the American Civil Liberties Union? Where militias are organizing in every state, primarily because of violations of the Second Amendment? Where a quarter to a third of the population exercises this right? Where even this right's most virulent opponents have to pretend they don't mean to abolish it? Where the worst (private sector) terrorist act in history was provoked by deaths caused by the government while infringing this right? I've got to ask: What planet did Scalia spend the last decade on? The planet of the governing elites, I suppose.

I wouldn't be so concerned about this if I thought Scalia would pursue his textual analysis to its logical end, come hell

or high water. But as Michael Greve notes, he won't. So much of the federal government is starkly unconstitutional by any honest analysis that even Scalia shrinks from doing the duty he's sworn to do: upholding the Constitution, rather than precedent. The extent to which he will do his duty is determined as much by his perception of the limits of public tolerance as by legal theory, and his perception seems grossly awry.

The apathetic majority won't care if the Court upholds or strikes down our rights. The minority who do care might plunge this nation into civil war if the Court attempts to abolish the wrong liberty. It would be outrageous enough if the Court did such a thing understanding the consequences of its act. Wouldn't it be a joke if they provoked a revolution out of nothing more profound than ignorance?

Brett P. Bellmore
Capac, MI

Michael Greve offers a good summary view of Scalia's constitutional views and his implementation of them, but I have to correct his description of the *Romer v. Evans* opinions. First, Scalia's dissent was hardly an "ideological critique." It was based on irrelevant references to *Bowers v. Hardwick* and polygamy laws, and some hyperbolic mischaracterizations of the majority opinion.

At one point, Scalia stated—falsely—that the majority opinion had declared unconstitutional the very process by which Amendment 2 was adopted. He also stated that the majority opinion had pronounced "animosity" towards homosexuality to be "evil" and "bigotry." These loaded words never appear, nor are they even hinted at, in the majority opinion. It is difficult to characterize these plain falsehoods as "calculated sarcasm." Rather, they put an ironic twist on Mr. Greve's statement that Scalia "cannot reason with" his opponents.

Mr. Greve also errs in stating that "[t]he majority did not bother to cite a single precedent or to marshal anything one might call an argument." I can only conclude that Mr. Greve never read the opinion. The truth is that it was grounded in the Equal Protection Clause of the 14th Amendment and provided strong (while not impervious) arguments regarding its applicability against Amendment 2. Over 20 relevant precedents were cited in building this argument. But then, perhaps Mr. Greve's own hyperbolic statement was modeled after Scalia's "calculated sarcasm."

James Maloy
Greeneburg, PA

Michael Greve replies: James Maloy and I are not going to agree on *Romer*. I think that *Bowers*—the lone Supreme Court precedent on homosexuality—was very relevant to *Romer*. The *Romer* majority harangued the Colorado voters for their "animosity" and "bare desire...to harm" homosexuals; to me, that's an accusation of "bigotry." Having read and re-read the opinion, I am at a loss to discern any of the "strong arguments" to which Mr. Maloy alludes.

What I do discern is *Romer*'s holding that we must not "exclude" homosexuals from the "civic life of a free society." The private right to exclude, however, is called freedom of association. *Romer* ran roughshod over this fundamental right. Why should libertarians strain to defend this result?

Don Erik Franzen shows a similar tendency to set aside—or not think through—libertarian commitments when sex, life, and death are at issue. He castigates Justice Scalia for his failure to discover—in cases dealing with abortion, the "right to die," and homosexuality—pre-political, constitutional rights "to control one's body, to end one's life, and to choose whom one sleeps with."

But the right to control one's body ends where someone else's life begins; for this reason, libertarian beliefs about the role of the state don't settle the abortion question. There is a right to die, in the sense that everyone can exercise it at any time. But the far more complicated question in the misnamed "right to die" cases is whether one can recruit a doctor's assistance in the act. And, sorry: There is *no* general right to "choose whom one sleeps with." One may not sleep with the dead or with sheep, for instance (and it's not because they can't consent).

I have considerable sympathy with Franzen's natural-rights thinking. But rights without contours are mere slogans; the question is, who determines the contours? Franzen is mistaken in suggesting that the determination and enforcement of extratextual rights *by the Supreme Court* have helped or will help "keep government at bay." To repeat the point of my article: If the Supreme Court's Constitution doesn't reflect the text, it will reflect the interests of the dominant elites. Perhaps we get a few highly questionable "reproductive rights," but we certainly get a constitutionalized nanny state.

Brett Bellmore, intriguingly, suspects that Justice Scalia himself may be a closet elitist. He suggests that Scalia underestimates the extent to which public (more precisely, populist) opinion would permit a textualist reconstruction of constitutional norms. Bellmore raises exactly the right question. I'm not sure, though, that Justice Scalia's instincts on "the limits of public tolerance" are "grossly awry." My sense is that Justice Scalia would gladly cast his jurisprudential lot with Second Amendment enthusiasts and other constituencies of Grover Norquist's "Leave-Us-Alone" coalition, if he were confident that they can eventually prevail over the governing elites. Can they?

The Croly Grail

Virginia Postrel's essay on Herbert Croly ("The Croly Ghost," December) should, I think, be seen as merely the first installment in a long-term commitment to examine the moral-intellectual foundations of American Progressivism. For a century now, leftists have enjoyed an intellectual free ride on the assumption that those foundations are not only secure but virtually beyond question. All too often, classical liberals have acquiesced in that assumption, trimming their principles to fit leftist strictures. As Postrel's essay indicates, however, that assumption and procedure must be questioned: "Seven decades after [Croly's] death, we are still living in the political world his ideas built—and struggling to escape it."

To make a clean break from it, however, we need to go even further than Postrel's claims and look to the antecedents of Croly's thought in 19th-century positivism. It's worth remembering that

Croly was no intellectual innovator, but a professed and ardent disciple of Auguste Comte, the father of positivism. Comte's work, in turn, is notable for two related ideas, both integral to the rise of totalitarianism in Europe: 1) the rejection of ethical individualism and individual rights and 2) the affirmation of anti-technological environmentalism. Comte was quite explicit that the basis for both ideas was his commitment to the ethical doctrine he devised and named "altruism." Altruism, as Comte conceived of it, was the virtue of self-denial and self-sacrifice, and it was the "highest virtue" in his celebrated "religion of humanity."

As Louis Budd points out in his important essay "Altruism Arrives in America" *(American Quarterly,* Spring 1956), Herbert Croly was one of the most eager advocates of this new ethical vision, which he, like Comte, conceived explicitly in altruistic terms. Croly's commitment to Comte's altruism provides the best explanation for why he thought that the "Promise of American Life" required "individual subordination and self-denial," and had to lead to such "serious moral adventures" as American involvement in World War I.

It also explains, via Croly's influence, the moral-intellectual reasons for the rejection of classical liberalism in the early 20th century. As Eric Goldman explains in his book *Rendezvous with Destiny,* both Croly and his disciples at *The New Republic* were very clear about the connection between self-sacrificial altruism and the statist politics they wished to implement. A look at recent issues of *The New Republic* indicates that some things never change.

With these elements in place, one can better understand Ayn Rand's otherwise counterintuitive suggestion that altruism is not only incompatible with individualism and rights but subversive of them. If self-sacrifice is one's highest virtue, its practice requires a consistent commitment both to sacrificing one's own rational agency to others, and to insisting that others, in consistency, do the same—coercing them "by a certain measure or discipline" if need be. By contrast, an ethics that defines the good in terms of egoistic virtues like rationality and independence will insist that self-sacrifice is a great evil and that nothing good can come of it. A philosophy that defends the pursuit of happiness against subordination to the needs of others will insist that moral agents are ends in themselves, not means to anyone's "moral adventures."

As Ayn Rand put the point in *The New Left: The Anti-Industrialist Revolution,* the battle against the left's supposed monopoly on moral-intellectual matters consists not merely of denouncing it but of exposing its pretensions. An intellectual movement that takes the likes of Auguste Comte and Herbert Croly as its mentors is in no position to be taking the high road on questions of morality, much less writing its views into law and forcing them upon others. It's about time that leftists, so eager to question "established beliefs," be asked to confront the rather dubious provenance of some of their own "established beliefs." Postrel's essay may not literally force them to rethink those beliefs, but as classical liberals I suppose we can all live with that.

Irfan Khawaja
Princeton, NJ

In "The Croly Ghost," Virginia Postrel says the popular libertarian slogan "government doesn't work" is "not so good....It thereby jettisons the entire classical liberal tradition—which is very much supportive of 'government' properly constrained—in favor of a vague anarchism." This is surprising, coming from someone who has written so many eloquent articles showing that voluntary exchange is far superior to government programs.

One need not be an anarchist (vague or otherwise) to recognize the obvious—that government doesn't work. It doesn't deliver the mail on time, keep the cities safe, or educate our children properly. Its War on Poverty and its War on Drugs are massive failures. Millions of Americans have lost faith in government precisely because governments everywhere have reached the inevitable stage where nothing about them works as promised.

When I appeared on hundreds of talk shows as the Libertarian Party's presidential candidate in 1996, often someone would say, "You exaggerate; many gov-

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ernment programs work well." But when I asked for a single example, the answer almost always was a deafening silence.

Only two programs were ever offered as evidence of government efficiency. One was the interstate highway system, but no one could explain why a program to build highways inevitably wound up spending billions of our tax dollars on such things as a new Denver airport that no one in Denver wanted and an L.A. subway system that Californians consider a joke. Another person suggested the Weather Bureau—but he couldn't explain why TV and newspaper weathermen, relying on government forecasts, are the butt of so many jokes.

Why don't these and other programs work correctly? The answer is simple. Anytime you turn anything over to the government, you transform what was a commercial, medical, social, safety, financial, or military matter into a political issue—to be decided by politicians like Bill Clinton, Newt Gingrich, Teddy Kennedy, and Jesse Helms. And guess how they make their decisions?

Conservatives recognize that government is incapable of eliminating poverty, discrimination, smoking, drinking, and many other supposed ills. But when the target is crime, foreign dictators, pornography, drugs, abortion, cloning, or any other item on their menu, government is suddenly transformed into Superman. Just allocate enough money, and the problem will be solved. And if the problem isn't solved, that's proof that not enough money was spent. Transpose the menus and you get the definition of a liberal.

Libertarians, however, know that government doesn't work—even when it tries to do something we want. Government is coercion—pure and simple. Every government program involves forced activity, forcible prohibition, and/or forced financing—or else it wouldn't be a government program. And there's no way to make force efficient or benevolent; it's just force. Thus libertarians are continually looking for ways to take functions—any functions—away from government, because they want to reduce government force to the absolute minimum possible.

What is the absolute minimum possible? We might argue endlessly about that, but the question is really irrelevant. What's important today is that most people reading this magazine—and, in fact, most Americans—want much less government than they have now. Once we've harnessed that antigovernment sentiment and reduced government to a fraction of its present size, we can argue over how much further we should go.

But realize that, when that happens, the free market will give the best minds in the world an incentive to devise profitable methods (that we can't even imagine today) by which the free market can perform functions we might think now can be performed only by government. That isn't a "vague anarchism"; it's a reasonable belief that free human beings are much more creative, productive, and efficient than government.

In the meantime, we move in the wrong direction if we attribute to government an efficiency or benevolence it can't possibly possess. That's turning government into a Santa Claus—someone who will grant us our wishes if we're good little children and ask for the proper things. In short, it's a fantasy. No, Virginia, there is no Santa Claus. Government doesn't work.

Harry Browne
Franklin, TN

Virginia Postrel replies: Irfan Khawaja's thoughtful letter, while quite interesting, probably exaggerates the influence of Comte on Herbert Croly, a matter that is of some dispute among Croly scholars. It is the case that Croly's father, David Croly, was a devout Comtean, literally rearing his son in the "religion of humanity." Like many a young intellectual, however, young Herbert came under other influences when he went away to college, much to his father's chagrin, and he continued to absorb other philosophical ideas throughout his life. (*The Promise of American Life* is more Comtean than his later work.)

The lasting influence of Croly's work came, in fact, from the way it synthesized and popularized many different ideas that were in the air at the turn of the century. Self-sacrificing "altruism" was only one such idea. The notion that large, bureaucratic organizations are more efficient than "wasteful" competition—but, at the same time, are too dangerous to be left unregulated—was another, arguably far more influential, one. So was pragmatism, in both the philosophical and colloquial sense. And so, indeed, was Croly's depiction of the talented individual crushed by mass society—a vision only a few steps away from Rand's *The Fountainhead.* Reducing complex intellectual currents to a single explanatory variable, however powerful that variable may be, is a hazardous practice.

Harry Browne's letter is Exhibit A in the case for Crolyist influence. To say "government doesn't work" is not the same as to say we should have "much less government than we have now"—unless you buy Croly's definition of "government" as necessarily consisting of "programs" of regulation and redistribution, rather than as institutions enforcing neutral rules. To declare simplistically that "government doesn't work" is to say government *in any form* doesn't work. And that is exactly what Mr. Browne does say in the paragraph that begins, "'Libertarians, however, know that government doesn't work."

This argument, which Mr. Browne retracts in the final two paragraphs of his letter, runs completely counter to the classical-liberal tradition of limited government, as well as to the constitutionally established order that Mr. Browne has elsewhere said he supports. It is an argument for anarchy.

As such, it dismisses the rule of law, overthrows the enforcement of contracts and property rights, eliminates the common defense, and permits mob rule (libertarians for lynching?). It quite rightly scares the hell out of the general public. If technocrats of the right and the left want to cling to power by claiming that we must choose between the huge, intrusive, Crolyist state and anarchy, that is their prerogative. But libertarians should not go out of their way to help make that ridiculous case. Critiquing failed programs is essential. Equating those programs with "government" is anachronistic, unimaginative, foolish, and just plain wrong.

As the societies of postcommunist Europe and the developing world struggle to establish a rule of law in which freedom

can flourish, 21st-century classical liberalism must think hard about how institutions—including government institutions—can evolve to support free minds and free markets. That requires creativity and serious intellectual and practical engagement.

As for the Santa Claus line, believe it or not, I've heard it.

Conspiracy Theories

Charles Paul Freund would do well to leave alone the muddled analogies of Daniel Pipes ("The Truth is Out There," December). Yes, both pornography and conspiracism titillate—but so do libertarian exposés of the drug war and command economy. Viewpoints held in disfavor by the politically powerful tend to take on a forbidding glamour; even the politically naive appreciate that phenomenon.

Indeed, conspiracism and libertarianism share a philosophical kinship to complement the aura. Adherents of the two camps understand the essence of the state: that it consists of mere mortals who don't stop acting out of self-interest despite the presumption that they act in the public interest, and that this intersection of self-interest and monopoly force poses a potent and far-reaching danger. Conspiracists go farther with this premise, of course, positing an intersection that spurs webs of elites to criminal—even diabolical—cooperation. While Freund is entitled to take issue with this extension, he might still present a fair picture of those who make it.

He does nothing of the sort. Even when defining his terms he demonstrates dogmatic contempt for his subject: "Conspiracism is a belief in nonexistent grand conspiracies as the motive force in history." He chides conspiracists for tagging as gullible all who don't subscribe to the paranoid view, yet much of his piece consists of sweeping generalizations regarding the conspiracists' own gullibility (for subscribing to theories relating to the October Surprise, for example, or U.N. weather control measures, or the whacking of Princess Diana by the House of Windsor). Irony is lost on him. "Conspiracy," Freund writes, "offers a world with neither accidents nor unintended consequences"—even as he offers a world with neither planning nor intended consequences.

Punditry is characterized by such bristling at conspiracy. In a 1979 editorial, *The New York Times* grudgingly accepted the findings of a congressional committee investigating the assassination of President Kennedy but objected to the word used to describe those findings. "Conspiracy," the editors intoned, "is freighted with dark connotations of malevolence."

Sometimes, though, the truth is dark and malevolent, and punditry's rigid adherence to randomism (wildly ironic given canards about conspiracists' simplistic and monolithic mindset) does nothing to advance the cause of truth. In the final analysis, the conspiracists' premise is remarkable only in its plausibility; the world would be an astonishing place if power were not inclined to hidden agendas and clandestine cooperation.

Tony Pivetta
Royal Oak, MI

Charles Paul Freund replies: Power may well be inclined to hidden agendas and clandestine cooperation, as Tony Pivetta writes. But what is at issue here is power's ability to plan with such complete foresight, and to manipulate with such total success, as to attain its goals while keeping its hand hidden over generations, if not centuries.

It is a founding concept of modern libertarianism that the world is a place of sufficient complexity that power's plans are necessarily incomplete, and that the consequences of its interventions, even when its actions are meant as benign, are both different from what was intended and beyond its control. Those who contend that the more sinister power is, the more prescient it is, have yet to demonstrate how this could be true.

Mr. Pivetta also objects that my use of the term *conspiracism* reflects dogmatic contempt. But this neologism has been coined (independently, several times) as a critical term, not a descriptive one. He can embrace the term if he chooses, of course, but that's its history. I don't deny my contempt for conspiracism; I do deny that there's anything dogmatic about it.

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Sexual Censorship

By Michael W. Lynch

When a group of Virginians sued the Board of Trustees of the Loudoun County Public Library in late December, challenging the restrictions it places on Internet usage, the press covered the case as a conflict between censorship and free speech. Here's the rest of the story.

The board had required

libraries that offer Internet access to install software intended to block adult-oriented Web sites, which is what prompted the lawsuit. But more interesting is the board's justification for that policy. It wasn't exercising discretion to shield children. It was protecting its staff and patrons from "sexual harassment."

"Library pornography can create a sexually hostile environment for patrons and staff," states the second line of the board's "Policy on Internet Sexual Harassment," which it adopted in late October. "Permitting pornographic displays may constitute unlawful sex discrimination under Title VII of the Civil Rights Act."

That's right. The statute that was used to ban pinups from shipyards and Goya's *Naked Maja* from Penn State University is now being used to ban portions of the Internet from public libraries.

Eugene Volokh, who teaches constitutional law at the University of California, Los Angeles, and has published widely on the threat Title VII poses to free speech, says this development is not surprising. Volokh maintains that Title VII has become a nationwide speech code through which the government punishes politically incorrect statements by people in private institutions. Every place is somebody's workplace, says Volokh. So if the government claims the authority to restrict pornography where welders toil, it should be no surprise that it claims that same power over the places librarians work.

"The intellectual left is eager to restrict bigoted speech in shipyards because they intuitively believe that the shipworkers' speech is of no constitutional value,'" Volokh says. "But you transfer that [power] to the library and people who go to libraries, and all of a sudden they see constitutional problems with restricting speech."

Balance Sheet

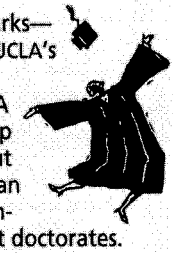
By Rick Henderson

ASSETS

△ **▲ Pot Praise.** Canada and France appear ready to permit medical marijuana. (See "Drug Trial," page 22.) Health Canada may allow the University of Toronto to grow marijuana for medicinal purposes. France will conduct medical marijuana trials in hospitals this summer and may decriminalize possession of pot in small quantities.

△ **▲ Disease Prevention.** Lead poisoning may join polio and rickets as childhood diseases of the past. Using figures from the Centers for Disease Control and Prevention, the American Council for Science and Health announces that only 0.4 percent of children between the ages of 1 and 5 face any lead-related health threats. Today's typical child has a blood lead level one-sixth as high as it was 20 years ago.

△ **▲ Youthful Rebellion.** "Freshmen Get High Marks—in Apathy," snipes a *Los Angeles Times* story on UCLA's annual nationwide survey of college freshmen. Apathy, of course, is in the eye of the beholder: A mere 26.7 percent of this year's freshmen keep up with politics, down from 57.8 percent in 1968. But a record number of these "disengaged" teens plan postgraduate studies: 39.4 percent intend to complete master's degrees; 15.3 percent aspire to get doctorates.



△ **▲ English Lessons.** British Prime Minister Tony Blair sticks it to teachers unions. The Labor Party proposes taking high schools out of union management, turning them over to "forums" run by parents, businesses, and community groups. The forums would manage budgets, allow private investment in facilities, and let students enroll in any public school a forum controls.

Booked Up

By Charles Paul Freund

Despite elitist concerns that giant publishing conglomerates and superstore book chains are narrowing the diversity of literature available to consumers, evidence is beginning to accumulate that the world of books is being transformed to expand reader choice as well as benefit smaller publishers.

Last November, the trade magazine *Publishers Weekly* reported that sales of books from smaller presses were rising dramatically in the superstores. Barnes & Noble reported that, for the quarter ending October 1997, "purchases from the top 10 publishers declined to 46% of the total, compared to 74% three years ago." The chain also reported that sales of best sellers during the quarter had fallen to less than 3 percent of total sales. The B&N sales report said these figures "reflect a wider range of consumer interest in less-known works of serious fiction and nonfiction than has previously been recognized." (See "Literature in Chains," November 1997.)

As for those who operate small publishing houses, Steve Piersanti, who runs Berrett-Koehler in San Francisco, shrugs off the fate of his larger rivals, telling *The New York Times* that their troubles are like the "battles between the various giant railroads while the real action was in the growth of new modes of transportation."

Halfway Measures

By Rick Henderson

Fewer than one in 10 non–English-speaking elementary students in California's public schools move from bilingual education to English instruction. That may not be such a shock if you consider that thousands of those students spend nearly half their school days in what

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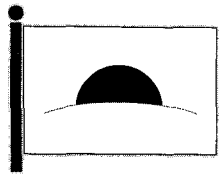
▼ Duplication Error. Has medical science gone far enough? That's the implication of President Clinton's call to ban human cloning. Clinton vilifies cloning on ethical grounds in his January 10 radio address while praising gene therapy—the target of similar religious and moralist attacks not so long ago.

▼ Sinking Sun. The so-called Japanese Economic Miracle keeps looking more like mush. The Finance Ministry concedes that Japan's heavily regulated banks are holding more than $700 billion in bad loans—more than three times as much as officials have previously admitted and about 15 percent of the banks' outstanding debt. The news could delay plans to deregulate the nation's financial sector.



▼ Got Milk? The endless expansion of the Family and Medical Leave Act continues. The White House backs an extension of the FMLA by Rep. Carolyn Maloney (D-N.Y.) that would require employers to give lactating mothers an hour a day with pay to breast-feed their kids. Maloney's bill would also give tax breaks to firms that set aside private feeding rooms.

▼ Copy 'Crats. Post an e-mail, go to jail? The newly enacted No Electronic Theft Act establishes the first-ever jail sentences for people who make "unauthorized" electronic copies of books, magazines, movies, or music *for personal use*. "Fair use" provisions that traditionally protected people who made photocopies have been replaced with fines as high as $250,000 and jail terms of up to five years.

LIABILITIES

amounts to extended recess.

That's the consequence of "mixing," a practice used widely in the Los Angeles Unified School District. Federal and state guidelines recommend having English-speaking students spend part of their classroom time with students in bilingual programs. "Some school administrators believe they can satisfy the [requirement] by shuttling students into music and art classes and physical education," notes Los Angeles *Daily News* reporter Terri Hardy in a December 21 investigative story. "But other schools simply send children outside to play."

State school officials claim they did not know about the problems with mixing because they only had enough inspectors to visit middle and high schools. "I agree [mixing is] a waste of time," Carmen Schroeder, who runs the LAUSD's bilingual program, told Hardy. Yet Schroeder said the district has no plans to change the practice.

California voters will have an opportunity to make bilingual education optional if they approve the English for the Children ballot initiative in June. (See "Loco, Completamente Loco," January.) Says Ron Unz, chairman of the initiative campaign, "if LAUSD indeed has a systematic campaign of giving Latino children three hours of playground recess each day and only half the academic instruction time of Anglo children, it's amazing that Latino children are doing as well as they are."

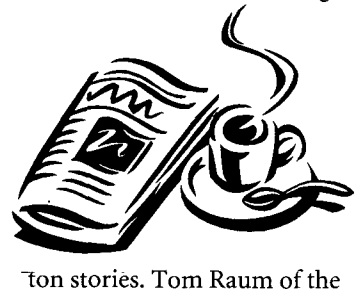
Whither Washington?

By Michael W. Lynch

Are Washington correspondents the Maytag repairmen of the media? We certainly aren't idle—there is always something for reporters to do in Washington—but the folks back home are tuning us out.

In the annual news index compiled by the Pew Research Center for the People & the Press, for the second year running not a single Washington-based story made the list of the 10 most followed news items. Of those stories followed "very closely" by survey respondents, Princess Di's demise headed the list, receiving "very close" attention from 54 percent of the public; the O.J. Simpson civil trial verdict rounded out Pew's top 10 list at 30 percent. The most-followed Washington story was Social Security reform, ranking 13th at 29 percent. In 1997, only one in two Americans followed domestic political stories "fairly closely," down from six in 10 in 1993.

Washington's scribes are well aware of the dimming spotlight. At a December 8 meeting of the Regional Reporters Association, a professional association for Washington correspondents, there was ample talk of declining editorial interest in Washington stories. Tom Raum of the Associated Press chalked up some of the distaste to the subject matter, noting, "Washington is one of the ▶



BRICKBATS

◆ Chuck Haddad and Andre Khalifi thought they'd come up with a winning idea. They wanted to open a cigar lounge with a gourmet menu, a full bar, and Internet access. But when they applied for a business permit, they found that other residents of Fountain Valley, California, had their doubts. They were concerned about those cancer-causing cigars and about parking. But mostly, they didn't like the idea of mixing alcohol and the Internet. Said one concerned citizen at a public hearing, "How are we going to protect our women after these guys get liquored up, look at pornography, and then roam the neighborhood late at night?" It didn't help that the police opposed "uncontrolled Internet access." Said Detective Sgt. Paul McGinnis, "I've never actually been on the Internet, but my understanding is that you can get just about anything you want on there." Haddad and Khalifi's permit was denied.

◆ Mark Gusow didn't think his attorney was working hard enough to get him off on a perjury charge. So he fired her. The attorney, Laura Morrison, asked him to step outside the courtroom. There, she put him in a headlock and scratched his face.

◆ Let's hope God isn't listening to this one. Billy Graham said he is praying for China. "It is my prayer that in the coming days Hong Kong's materialism will not prevail in China," he said.

BRICKBATS

◆ And in Mexico City, a Roman Catholic bishop says that condoms should carry a warning sticker. In response to an advertising campaign promoting condoms as a way to reduce one's chances of getting AIDS, Bishop Ramon Godinez called for a label warning: "This product may be hazardous to your health." A Godinez supporter adds that the label should further read: "Even though you use a condom, you will probably get AIDS."

◆ Meanwhile, north of the border in San Diego, a U.S. Border Patrol agent faces disciplinary action. A photographer caught the man mooning a group of Mexican taxi drivers through a fence on the border.

◆ Rep. James Oberstar (D-Minn.) once got a perfect rating from the League of Conservation Voters, and he once forced the Air Force to study the impact of training flights on wildlife. So the menu at one of his fundraisers last year must have raised some eyebrows. He served moose meatballs, roast buffalo, roast venison, and smoked salmon.

◆ Who's the ideal boss? Bill Gates? Bill Cosby? Heidi Fleiss? Well, a poll of Japanese government bureaucrats saw Genghis Khan take the top place. Genghis, of course, brutally conquered a huge portion of Asia. Taking second place was the manager of a Japanese baseball team. Prime Minister Ryutaro Hashimoto finished ninth.

hardest places to make news come to life." Carl Sessions Stepp, a professor of journalism at the University of Maryland, told the assembled reporters to be creative in looking for stories and to avoid sending editors "dull government shit that nobody reads."

Now there's an idea.

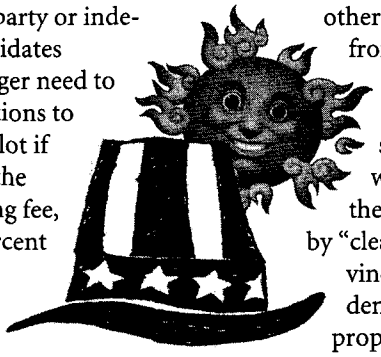
Sunshine Reforms

By Brian Doherty

Thanks to an unusual provision of Florida's constitution, advocates of civil forfeiture and ballot access reforms could have the chance to make big changes in the Sunshine State's laws without first having to undergo the exhausting and expensive efforts usually necessary to get such initiatives on the ballot.

Every 20 years in Florida, a Constitution Revision Committee is formed which can recommend constitutional amendments to be voted on in the next general election. This year an ad hoc group of libertarian-inspired activists has managed to get the full commission to give its initial approval to reforming civil forfeiture law and ballot access requirements.

The ballot access proposal, which was supported by a bevy of third parties, including the Libertarians, Greens, and Socialists, won unanimous initial approval from the committee. If this proposal reaches the ballot and passes, third party or independent candidates would no longer need to circulate petitions to get on the ballot if they can pay the state qualifying fee, which is 6 percent of the officeholder's annual salary. Those who couldn't or wouldn't pay the fee could still get on the ballot by collecting the same number of signatures from registered voters required of Republican or Democratic candidates for that office. This would be quite a change for a state whose Supreme Court recently ruled that the state has an interest in "strengthening and encouraging major parties" when it upheld a state law that gives Republicans and Democrats a 50 percent rebate on campaign filing fees that minor candidates don't enjoy.



The proposed asset forfeiture amendment would make it more difficult for the government to seize money and other property from alleged criminals. The current standard, which requires the state to show by "clear and convincing evidence" that property was the proceeds of a criminal endeavor before seizing it, would be replaced with a "beyond a reasonable doubt" standard, which would be tougher for prosecutors to meet. Attorney General Robert Butterworth, a member of the committee, was opposed

to the proposal, which passed by a 17-to-9 vote. Another committee member mentioned the laments he had heard privately from state and local law enforcement officials, bemoaning the hit their budgets might take if it became more difficult for them to seize property.

Some serious obstacles remain before either amendment reaches the ballot. Both proposals are now before a drafting committee, where they might be rewritten. And even if they survive the drafting committee, they must then go back to the full Constitution Revision Commission and pass with 22 out of 36 possible votes before being placed on Florida's ballot in November.

Preferential Treatment

By Nick Gillespie

When the University of California system banned race-based admission preferences and the *Hopwood* decision effectively outlawed similar programs at public universities in Texas, affirmative action advocates predicted a huge drop-off in black and Hispanic university attendance in those states. They pointed to declining enrollments at U.C.-Berkeley's and the University of Texas at Austin's law schools to prove their point: Between 1996 and 1997, black admissions to Berkeley's law program plummeted from 20 students to one, while Hispanic admissions were halved from 28 to 14. U.T.-Austin saw similar declines: Black admissions went from 29 to four, and Hispanic admissions from 46 to 31.

Such figures, however, mask a more widespread trend: an *increase* in minority enrollments at many of the schools in those systems. For instance, between 1996 and 1997, black admissions to nonprofessional graduate programs at U.C.-Berkeley climbed from 77 students to 82, at UCLA from 102 to 108, and at U.C.-Riverside from seven to 17. Hispanic graduate admissions dropped from 137 to 107 at Berkeley but went up at UCLA and held steady at Riverside. Black and Hispanic admissions to medical schools at UCLA, U.C.-Davis, and U.C.-San Francisco also held steady. In Texas, undergraduate admissions of blacks and Hispanics declined at Texas A&M but remained the same or increased slightly at U.T.-Austin, U.T.-Dallas, and U.T.-Arlington. And minority freshman admissions shot up at the state-run University of Houston, going from 456 to 543 for blacks and from 494 to 660 for Hispanics.

The numbers reflect changes and differences in ▶

DATA

Clearing the Smog

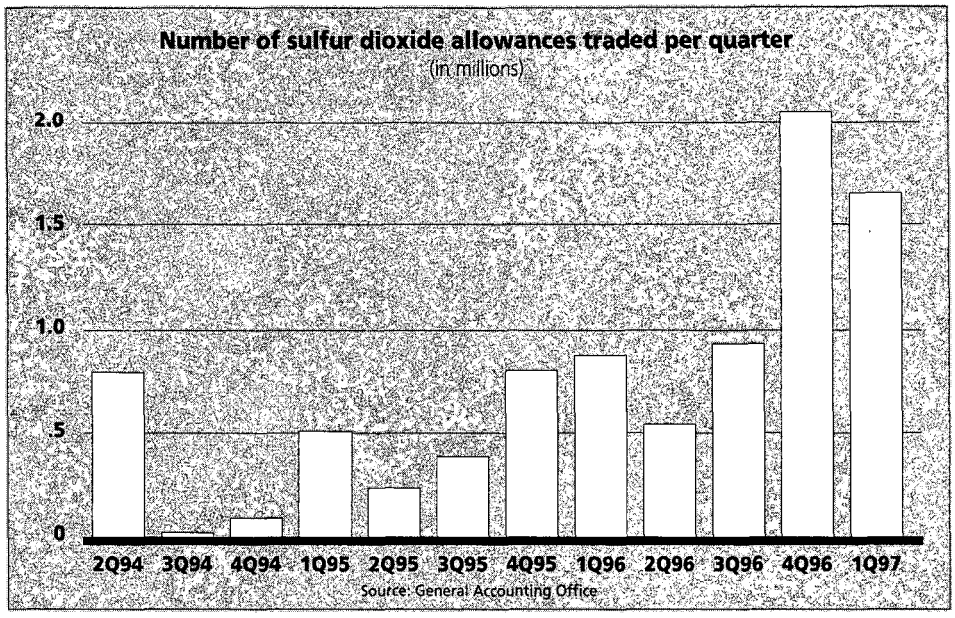
By Brian Doherty

After a slow start, the federal government's national sulfur dioxide trading program shows signs of hitting its stride. (See "Selling Air Pollution," May 1996, www.reason.com/9605/Fe.BRIANemissions.html)

Established by Title IV of the 1990 Clean Air Act, the sulfur trading program applies market discipline to pollution reduction. Instead of just commanding electric utilities—the biggest sulfur dioxide polluters—to cut emissions, it grants the utilities annual allowances, worth a ton of sulfur dioxide each, with the number falling every year. If one utility can figure out a way to reduce emissions more cheaply than another, it can sell its extra allowances. This gives utilities an incentive to make extra reductions, since they can now profit from their relative cleanliness.

The program didn't instantly produce a robust market, for various reasons. For example, many utilities won't enter the program until 2000; an allowance's status as property isn't secure; and many state regulators haven't yet decided how to treat money made from selling allowances in determining the rates utilities may charge. The General Accounting Office reported in 1994 that utilities were missing out on a potential $1.2 billion in savings because of the small number of trades.

Since 1994, however, the number of allowances traded has skyrocketed by nearly 400 percent—from 881,852 traded in 1994 to 4,407,301 in 1996. And the trading program is cutting pollution as well as saving money: Emissions in 1996 from utilities already covered by the sulfur trading program are 35 percent below the yearly cap of 8.3 million tons.



BRICKBATS

◆ Leaders in Malaysia aren't too busy dealing with that country's economic crisis to deal with really important matters. The Malaysian state of Kelantan has banned darkness in theaters. The reason: Couples might take advantage of the darkness to kiss. So lights in theaters must remain on during the movie.

◆ A Malaysian judge has sentenced a Canadian reporter for the *Far Eastern Economic Review* to three months in jail for contempt of the judiciary. Murray Hiebert wrote an article about lawsuits in Malaysia. One case that he mentioned involved the wife of an appeals court judge who sued her son's school for dropping him from the debate team. That woman sued Hiebert. The court told the news media to remember that court cases should not be used for "commercial purposes."

—Charles Oliver

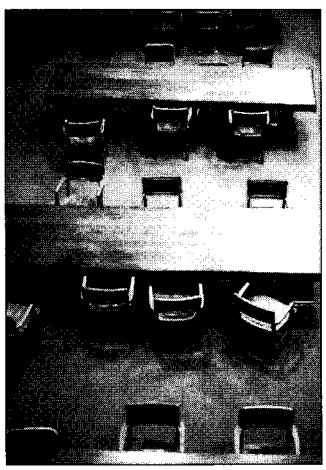
QUOTE

"I don't think there's any reason for public television to exist anymore, I honestly don't. ...There isn't anything that they do that can't be done and done better by any one of a dozen cable channels. What C-SPAN is now is what public television should have been and never had the wit to do."

—Garrison Keillor, in the January 5, 1998, edition of *The Nation*

admissions policies. Berkeley's law school, for example, bases its admissions almost exclusively on LSAT scores and grades, while its nonprofessional graduate programs and medical schools have long considered a wider range of criteria, including socioeconomic background.

In Texas, most students were formerly admitted on the basis of test scores and previous grades, while others—including minorities and whites with weaker records—were put in a pool where race was considered as a significant factor. In the wake of *Hopwood*, however, all applicants go into the same pool, in which test scores and grades—still the dominant factors—are supplemented by two essays and information about extracurricular activities.



Critics suggest that broadening admissions criteria beyond test scores and grades is simply a way of perpetuating race-based admissions policies. But other preference foes—including U.C. Regent Ward Connerly—disagree. Relying on test scores and grades alone for admission to college and graduate programs is "absurd," Connerly told *U.S. News & World Report*. "You owe it to these kids to give them an individual review."

Red Tape Headaches

By Michael W. Lynch

It's not unusual to hear beleaguered business owners complaining about burdensome government regulations. But homeless shelters and churches? A report by Project 21, a group dedicated to promoting entrepreneurship in African-American communities, shows regulations from all levels of government are crippling charitable organizations.

In a 1997 nationwide survey of community service organizations, 392 of 441 respondents reported problems with government. The regulatory red tape falls into two categories: regulations that apply to all organizations regardless of their missions—such as labor and environmental laws—and specific rules a group must meet before getting government funding, such as staffing requirements. The preponderance of harassment comes not from regulations meant to assure reasonable oversight of taxpayer dollars but from laws—such as prevailing wage requirements, the Americans with Disabilities Act, and stringent environmental permitting processes—that unnecessarily increase the cost of delivering services.

"Whether it's an application process for government

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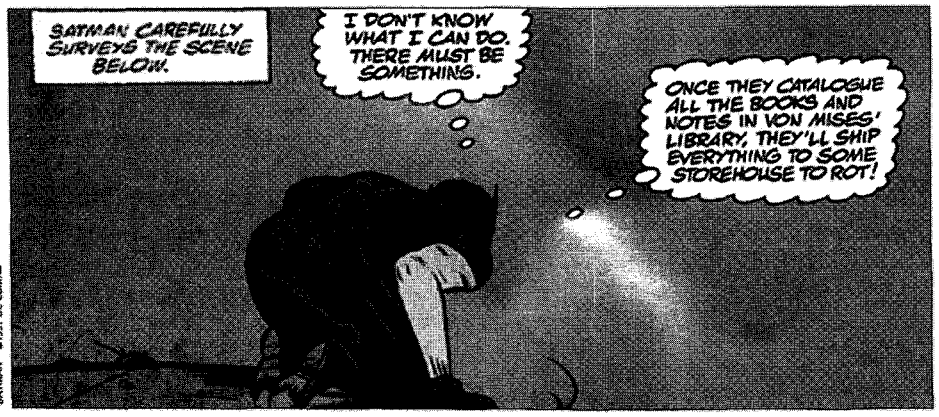
ARTIFACT

Human Action Comics


BATMAN CAREFULLY SURVEYS THE SCENE BELOW.
I DON'T KNOW WHAT I CAN DO. THERE MUST BE SOMETHING.
ONCE THEY CATALOGUE ALL THE BOOKS AND NOTES IN VON MISES' LIBRARY, THEY'LL SHIP EVERYTHING TO SOME STOREHOUSE TO ROT!
BATMAN™ ©1997 DC COMICS

Ideas may run the world. But no idea stalled in the world of professional intellectuals can run far. F.A. Hayek wrote that, to thrive, ideas must be spread by such "second-hand dealers in ideas" as journalists and teachers.

But what about a venue as purportedly third-rate as popular comics? At left, Hayek's mentor, the economist and philosopher Ludwig Von Mises, (1881–1973) is the surprising offstage hero in a recent issue of the DC comic *Batman Chronicles*, which uses the Batman concept in unusual settings. In a tale set in 1939, the "Berlin Batman" (by day the wealthy painter "Baruch Wane") tries to foil the Nazis' theft of Mises's papers. That theft really happened; the papers fell into Soviet hands after World War II and were thought lost until a Mises biographer found them in 1996.

Written and drawn by Paul Pope, the highly stylized comic is resolutely ideological in Mises's support. A postscript in the voice of the Berlin Batman's ward, Robin (here a young woman), describes how "Von Mises' anti-authoritarian ideas were first a threat to the Nazis, then the Soviets, and to all increasingly regulatory governments in our own times. He was against socialism in all its many forms. He was an advocate of individual liberty, free speech, and free thinking...and so, should I add, was the Berlin Batman."

—Brian Doherty

funds that takes a hundred hours to complete, requirements that consider credentials in drug dependency counseling to be more important than a counselor's effectiveness, or a preference for metal over plastic wastebaskets, the absurdity and sheer volume of government regulations are impeding the ability of local charities to help those in need," noted the report.

The De Le Salle Academy, a New York City school for low-income, high-achieving students, complains that having to shell out $500,000 for renovations to comply with the ADA prevented it from expanding its programs. The Congress of Racial Equality discontinued its internship program after being told by the New York State Department of Employment that it must pay interns minimum wage.

Paperwork and permit requirements burdened many organizations. John D. Connelly, executive director of Jobs for Youth of Chicago, griped that the government required 37 pages of paperwork just to enroll a young person in programs funded by the Jobs Training Partnership Act—29 pages more than is required for the same person to apply for a university education. Kevin Nunn, president of the Bronx Overall Economic Development Corporation, said the city requires so many "applications forms and other tedious procedures" that it "brings its own economic development to a standstill."

Canon Fodder

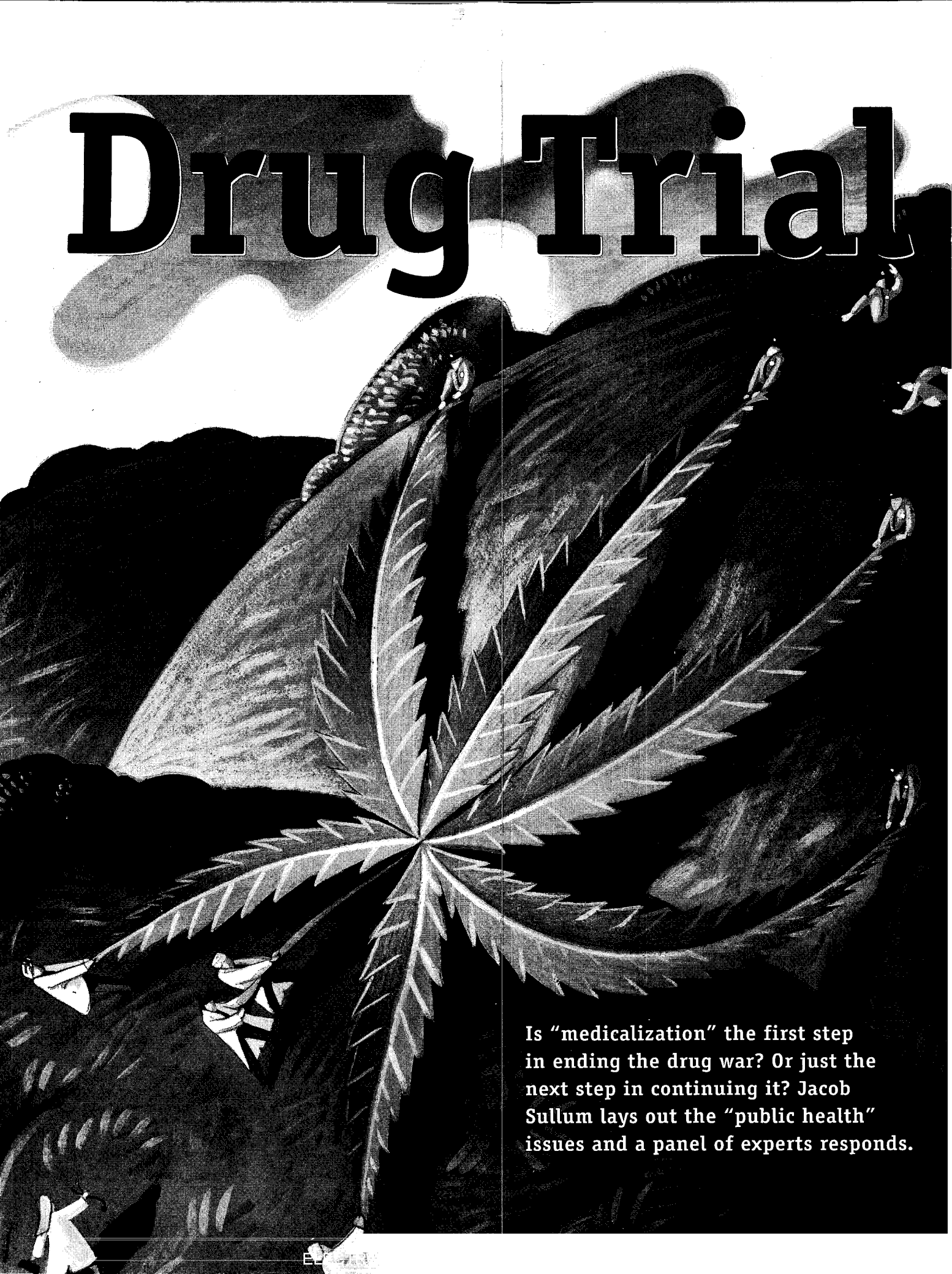
By Nick Gillespie

Amid cries that barbarians are at the gate and that beloved Shakespeare is sleeping with the fishes, cultural conservatives can take comfort in a new course being offered to undergraduates at the State University of New York at Buffalo—a school better known for a maverick intellectual tradition (French social critic Michel Foucault got his first American teaching gig there in the 1970s) than its respect for tradition.

Called "The Literary Top Ten," the course's reading list was culled from a survey that asked 2,100 faculty members to list the 10 books they would most like their own children to have read by the time they graduated college. The final line-up: selections from the Bible; Homer's *Iliad* or *Odyssey*; Plato's *Republic*; Shakespeare's *Hamlet*; a unit made up of the Declaration of Independence, the Constitution, and the *Federalist Papers*; Melville's *Moby Dick*; Dickens's *Great Expectations*; Darwin's *Origin of the Species*; Freud's *Interpretation of Dreams*; and a Tolstoy novel.

English Department Chair Kenneth Dauber, who oversaw the survey and course development, expressed bemused satisfaction with the traditionalist bent of the selections. "As keepers of the sacred flame, I guess the faculty consider these texts the best vehicles for the ideas they'd like to see passed on," he told an alumni newsletter. "We got what we asked for...a list of books that incorporate the ideas and values that an educated person living in America in the late 20th century would like to be conveyed to the next generation."

Drug Trial



Is "medicalization" the first step in ending the drug war? Or just the next step in continuing it? Jacob Sullum lays out the "public health" issues and a panel of experts responds.

Washington state's Initiative 685, the "Drug Medicalization and Prevention Act of 1997," failed by a big margin last November. But "medicalization" is here to stay. In one form or another, it is the most frequently endorsed alternative to the war on drugs—far more popular among reformers than the free market favored by libertarians. That fact is a source of hope to some, dismay to others.

In 1988, when Baltimore Mayor Kurt Schmoke helped generate a surge of interest in drug policy reform by calling for "a national debate on the merits of decriminalizing drugs," it was medicalization he had in mind. "Making drugs illegal has not diminished the American appetite for these substances," he later explained. "That is because drug abuse is a disease. And like any other disease, it responds to medical treatment, not criminal sanctions....Decriminalization is in effect 'medicalization,' a broad public health strategy—led by the Surgeon General, not the Attorney General—designed to reduce the harm caused by drugs by pulling addicts into the public health system. Criminal penalties for drug use would be removed and health professionals would be allowed to use currently illegal drugs, or substitutes, as part of an overall treatment program for addicts....Drugs would not be dispensed to non-users, and it would be up to a health professional to determine whether a person requesting maintenance is an addict."

This general approach—with some important differences in detail—has played a leading role in criticism of the war on drugs during the past decade. One cannot attend the Drug Policy Foundation's annual conference without hearing repeatedly about the merits of a "medical" or "public health"

KENNETH SPENGLER

model. The Lindesmith Center, a New York drug policy think tank funded by billionaire philanthropist George Soros, emphasizes "harm reduction," a public health strategy aimed at mitigating the costs of both drug use and drug laws through measures such as needle exchange, heroin maintenance, and the legalization of marijuana for medical use.

Physician Leadership on National Drug Policy, a new group that includes former FDA Commissioner David Kessler and former Secretary of Health and Human Services Louis Sullivan, declares that "addiction to illegal drugs is a chronic illness." Without calling for decriminalization, the group argues that law enforcement has been overemphasized, saying "enhanced medical and public health approaches are the most effective method of reducing harmful use of illegal drugs."

The war on drugs is not going to end overnight. Certain piecemeal reforms can mitigate injustice now and help prepare the public for more radical change later. Reducing the penalties for marijuana possession in the 1970s was such a reform.

Washington's Initiative 685, which was modeled after Arizona's Proposition 200, echoed this theme. "In addition to actively enforcing our criminal laws against drugs," it said, "we need to medicalize Washington's drug control policy and recognize that drug abuse and addiction are public health problems that should be treated as diseases." Accordingly, it prescribed "treatment" rather than incarceration for "nonviolent persons convicted of personal possession or use of drugs." Such offenders would receive probation, and the sentencing judge could "require participation in an appropriate drug treatment or education program." If already in prison, people in this category would be "eligible for immediate parole and drug treatment, education, and community service," provided they were not covered by a "habitual criminal" statute or serving a concurrent sentence for another crime.

Despite the line about "actively enforcing our criminal laws against drugs," these provisions would have eliminated jail time for simple possession—a dramatic change from current policy. But another aspect of the initiative, authorizing doctors to "recommend" Schedule I drugs for the treatment of "seriously ill" patients, got more attention, since it tied into the national debate over medical marijuana. This section said a physician who recommended a Schedule I substance, such as heroin, LSD, or marijuana, would not be prosecuted or disciplined as long as he cited relevant scientific research, obtained the patient's written consent, and got a second opinion from another doctor.

Washington's voters did not go for it. Although its backers spent 10 times as much as their opponents—with infusions of money from Soros, Phoenix entrepreneur John Sperling, and Peter Lewis, CEO of Cleveland-based Progressive Insurance—the measure lost by 20 percentage points. Some voters may have felt that out-of-state organizers with out-of-state money were trying to pull one over on them. The opposition's ads, funded in part by Microsoft and by presidential hopeful Steve Forbes's Americans for Hope, Growth and Opportunity, sought to reinforce that impression. The conservatives who turned out to oppose the state's highly publicized gun control initiative probably also helped defeat Initiative 685.

The loss in Washington was a mirror image of the victory in Arizona, where 65 percent of voters endorsed essentially the same initiative in November 1996. Since then the Arizona legislature has passed bills overriding key elements of the proposition. In response, the initiative's supporters have gathered signatures to submit those bills to the voters as referendums on the 1998 ballot. They are also backing the Voter Protection Act, a proposition that would amend the state constitution to require a three-fourths majority in each house of the legislature to overturn a voter-approved initiative.

Unlike the Arizona and Washington measures, initiatives that deal exclusively with medical marijuana do not explicitly advocate a "public health" approach to drug policy generally, but they do represent one aspect of the "harm reduction" agenda. After California's Proposition 215 passed by a comfortable margin in 1996, Americans for Medical Rights began pushing similar measures in other states. Activists hope to have medical marijuana initiatives on the 1998 ballots in Alaska, Colorado, the District of Columbia, Maine, Nevada, and Oregon.

However medicalization fares on state ballots, it will continue to shape opposition to the war on drugs for years to come. That is partly because it offers a sharp contrast to the prohibitionist approach that has long dominated U.S. drug policy. The stated aim of the prohibitionists is to eliminate drug use—by which they generally mean the use of *certain* drugs, set apart from accepted intoxicants by custom, superstition, and historical accident. The stated aim of the public health specialists, by contrast, is to minimize morbidity and mortality—including the harm associated with the use of all drugs, whatever their current legal status.

Thus, the public health specialists are in some ways more realistic than the drug warriors: They acknowledge that any drug, licit or illicit, can be harmful under certain circumstances. And they stress harm rather than drug use per se. This implies that the consumption of psychoactive substances is not necessarily problematic. It also suggests a willingness to consider the undesirable effects of attempts to discourage drug use. This openness to evidence is probably the most important way in which public health specialists differ from prohibitionists.

In terms of policy, both prohibitionists and public health

specialists talk a lot about "education." Prohibitionists seem more willing to bend the truth if they think it will help scare people away from drugs, while public health specialists are more likely to insist that drug "education" have a sound scientific basis. They note that scare tactics tend to backfire in the long run, as people recognize that they've been misled and learn to distrust the source. Still, public health messages about drugs, like public health messages in general, are aimed at changing behavior, not simply disseminating facts.

Aside from education, the policy prescriptions offered by public health specialists sound quite different from those offered by drug warriors. Prohibitionists emphasize interdiction, crop eradication, and other attempts to reduce the supply of drugs, along with arrests, fines, property forfeiture, and imprisonment for producers, sellers, and buyers. Public health specialists emphasize treatment, taxes, and regulations.

The prohibitionist orientation is basically punitive: Using certain drugs is a crime; people who do it deserve to be arrested, humiliated, imprisoned, and divested of their property. The public health orientation, by contrast, is therapeutic: Drug abuse is a disease; people afflicted by it need to be treated. From this perspective, current policy is irrational and inhumane. After all, you don't lock people up for cancer or diabetes.

But as Thomas Szasz and other critics of contemporary psychiatry have long argued, the ostensibly liberal policy of treating behavior like a disease can have profoundly illiberal consequences. A disease is something inherently undesirable that happens to people against their will. No one in his right mind *wants* to be sick. Furthermore, drug addiction is said to be a disease that impairs the patient's judgment. Where's the harm, then, in forcing him to be well? Under the circumstances, it would seem to be the compassionate thing to do. Presumably, that is the rationale behind Initiative 685's "court-supervised drug treatment." When the disease model is combined with the public health imperative to minimize morbidity and mortality, and to enlist the state's assistance in that endeavor, the logical result is never-ending intervention in personal decisions. (See "What the Doctor Orders," January 1996.)

Some reformers who are privately skeptical of the disease model push it because they think that's what the public is prepared to accept. From their polling and their focus groups, the supporters of the Arizona and Washington initiatives knew that voters were not ready for outright decriminalization. They needed to be assured that *somebody* would be in charge—if not cops, then doctors. Given the fate of Washington's initiative, the wisdom of this strategy is open to question. But even if the measure had passed, it might have made further reform more difficult by reinforcing the disease model. If voters believe that people cannot reasonably be expected to control their drug use, how likely are they to support the repeal of prohibition?

On the other hand, the war on drugs is not going to end overnight. Certain piecemeal reforms can mitigate injustice now and help prepare the public for more radical change later. Reducing the penalties for marijuana possession in the 1970s was, I think, such a reform. Making marijuana legally available as a medicine may be another. By the same token, surely drug users would be better off if they were never sent to prison, even if they sometimes had to endure court-ordered "treatment."

Judging from my conversations with reformers, I'm not the only one who is ambivalent about these issues. To help bring the debate into focus, REASON invited several prominent critics of the war on drugs to discuss the pros and cons of medicalization.

Senior Editor Jacob Sullum (jsullum@reason.com) is the author of For Your Own Good: The Anti-Smoking Crusade and the Tyranny of Public Health, *forthcoming this spring from The Free Press.*

The Political Legitimation of Quackery

By Thomas Szasz

The Washington State "Drug Medicalization and Prevention Act of 1997" asserts that "we need to...recognize that drug abuse and addiction are public health problems that should be treated as diseases." The merits of this claim cannot be intelligently debated without agreeing on the use of the terms *drug abuse, addiction, treatment,* and *disease,* and on the kinds of personal conduct that justify coercive state control by means of public health measures.

From ancient times until recent years, the term *public health,* as distinguished from *private health,* was used to denote activities undertaken by a government to protect individuals from disease-causing agents or conditions in the environment, both physical and human. The principal public health measures have been sanitation and the control of infectious diseases, aimed at protecting the community from microbial diseases such as cholera and typhoid. In this connection, the control of venereal diseases illustrates an important consideration: The prostitute's behavior, exposing her client to the risk of venereal disease, was and is viewed as a *public health* problem, justifying the coercive control of her conduct, whereas the behavior of her client, exposing himself to the risk of venereal infection, was and is viewed as a *private health* problem, not justifying the coercive control of his conduct. By defining the behavior of the individual who exposes himself to the risk of "addiction" as a public health problem, we radically expand the range of legitimate state coercion in the name of health.

Public health measures play a crucial, but neglected, role in modern political philosophy. Interventions justified in the name of health—defined as therapeutic, not punitive—fall outside the scope of the criminal law and are therefore exempt from constitutional restraints on state coercion. On the contrary, such measures—promoted as protecting the best interests of "sick patients"—are viewed as valuable "services" provided by the Therapeutic State (the polity uniting medicine and state, much as church and state formerly were united). Presciently, John Stuart Mill anticipated this insidious tactic: "The preventive function of government," he warned, "is far more liable to be abused, to the prejudice of liberty, than the punitory function; for there is hardly any part of the legitimate freedom of action

of a human being which would not admit of being represented, and fairly too, as increasing the facilities for some form or other of delinquency."

Mill could not have put it better had he been addressing present-day American drug policy. It is self-evident that free access to a particular drug, like free access to any object, increases our opportunities for using and abusing it: Freedom of action means the opportunity to act wisely or unwisely, to help or harm ourselves. It is also self-evident that, since "no man is an island," any private act may be viewed as affecting the economic, existential, or medical well-being of others, and hence be deemed to pose a "public health problem"; and that if protecting people from themselves falls within the sphere of public health, then no private behavior is exempt from being categorized as a public health problem, subject to control by means of medical sanctions.

It is ironic that, in 1997, Americans should recommend "drug medicalization" as a *cure* for America's drug problem: It was the "drug medicalization" act of 1914—better known as the Harrison Narcotic Act—that transformed widely used analgesics and sedatives into dangerous "narcotics," specially monitored by the federal government, available *only* by a physician's prescription. *Horribile dictu,* isn't it possible that defiance of such controls is not a disease, and that coercive state interference with the free market in drugs—like similar interference with the availability of other goods—may be the root cause of the problem we now try to solve by still further "medicalization"? Aren't we fools if we fail to ask, *cui bono?:* Who benefited from drug medicalization in the past and who benefits from it today?

The die is now cast: Misbehaviors of all sorts are (defined as) medical problems. *Unwanted behavior,* exemplified by the use of illegal drugs, is, by fiat, a disease. The concepts of disease and treatment have thus become politicized. The World Health Organization's definition of drug abuse as the "use of a drug that is not approved by a society or a group within that society" is illustrative. Thus, doctors, judges, journalists, civil libertarians, everyone accepts—or pretends to accept—that self-administering heroin is a disease and that a state agent administering methadone to an "addict" is a treatment.

Some see the Therapeutic State as an instrument of compassion and science in the service of "moral progress" and accordingly support "medicalization" in all its many guises. Others see the Therapeutic State as an instrument of cruelty and pseudoscience in the service of a new form of statism and accordingly oppose "medicalization."

Contributing Editor Thomas Szasz, professor of psychiatry emeritus at the SUNY Health Science Center in Syracuse, is author of many books, including Our Right to Drugs: The Case for a Free Market *(Praeger).*

A New Metaphor for Autonomy

By Jeffrey Singer

In November 1996, Californians voted to allow possession and use of marijuana for medical purposes with a physician's recommendation. Arizonans went further. They permitted patients to possess and use any illicit drug, provided they receive a written prescription from a physician, who, in turn, obtains a concurring second opinion. In addition, the Arizona ballot measure gave drug users probation and rehabilitation rather than prison time for the first two convictions. It prohibited incarceration of nonviolent drug offenders until the third conviction. Finally, the measure made eligible for release all inmates serving time for simple drug possession with no other offenses.

Vice President Al Gore, Attorney General Janet Reno, drug czar Barry McCaffrey, and former Presidents Bush, Carter, and Ford participated in media events warning voters of the dangers posed by these initiatives. Despite those efforts, the ballot measures passed easily, with 56 percent support in California and 65 percent in Arizona.

From the perspective of some libertarians, most notably Thomas Szasz, the public health model embodied in these initiatives can be seen only as a pernicious extension of the meddlesome Therapeutic State. But when applied to drug policy, medicalization actually represents a radical rupture with the federal government's oppressive drug war.

I served as medical spokesman for the group that developed and promoted the Arizona initiative. Our mission was to seek alternatives to current drug policy. Accordingly, we commissioned focus group research to explore how citizens felt about the drug issue.

Two dispositions were immediately apparent: 1) People overwhelmingly felt the drug war was a failure, and 2) people strongly opposed the alternatives of decriminalization and legalization. But this did not mean they opposed significant reform. For example, focus group participants firmly rejected the policy of "do drugs, do time." They believed treatment was much more appropriate than imprisonment for drug users. This belief was so strong that they were willing to parole offenders already in prison. Furthermore, they believed that when it came to prescribing drugs—even marijuana, heroin, and LSD—the patient/doctor relationship should supersede government control. Arizona voters probably did not realize how widely such beliefs were shared: Tracking polls showed that 60 percent supported the initiative but only 25 percent thought it would pass.

The focus group and tracking poll results illustrate what postmodern philosopher Michel Foucault calls "subjugated knowledge"—an implicit belief that people cannot communicate unless given the language to do so. The Arizona focus group research revealed a radical resistance to the drug war that lacked a narrative with which to express itself. The common "metaphors" of resistance—legalization and decriminalization—were unsatisfactory. A new vocabulary took shape as a result of the focus group experience. Group members repeatedly said drug abuse is really a "medical" issue. They said drug treatment, even if it doesn't work, is a more just form of punishment. Thus, a new discourse on drugs emerged, representing a halfway position between prohibition and repeal. Years of prohibitionist propaganda made it impossible to generate popular support for anything more ambitious.

This new discourse of medicalization is not a top-down narrative of control written by the government. Instead, the people

have generated a language of resistance to oppressive and ineffective policies. This discourse is percolating up from citizens who believe medical authorities can address the drug issue more effectively than government bureaucrats.

Libertarian critics mistakenly take the term *medicalization* to mean the transfer of power from a political dictator to a medical dictator. To be sure, the postmodernist would agree that medicalization is a metaphor of control. But as Foucault argues, there is no way "outside of" power; all human interactions involve power relations. Therefore, the only way of conceiving issues of autonomy is through empowerment. In the context of drug policy, "medicalization" is a metaphor of empowerment.

In practical terms, the Arizona and California ballot measures have eased statist drug controls. The federal government responded by threatening to punish doctors who prescribe illicit drugs to their patients. This policy prompted federal lawsuits (including one in which I am a plaintiff) that fundamentally challenge the way drugs and medical practice are regulated. A recent national poll found that 69 percent of Americans oppose the federal response to the medicalization initiatives.

During the Arizona campaign, I had many arguments with libertarian friends who shared Dr. Szasz's suspicions of medicalization. But the reaction of the federal government and the law enforcement community to the measure's approval, coupled with strong public opposition to that reaction, has led many of them to re-examine their positions. Any drug policy reform that engenders so much outrage from the political establishment and incites such widespread dissent can't be all bad.

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The Medical Marijuana Menace

By Dave Fratello

California and Arizona voters changed the politics of the drug war when they approved "medicalization" ballot initiatives in 1996. Both reformers and prohibitionists have had to deal with the consequences.

On the reform side, as the movement begins to mature and achieve a tangible success here and there, we are seeing internal debate and factionalization. For years the movement has functioned amorphously, with a "big tent" mentality and a lot of preaching to one another. Nowadays, those of us working on medical marijuana initiatives for the 1998 ballot seem to catch flak from every angle. Repeal advocates tell us that medical marijuana does not go far enough. We are also criticized for *how* we would permit medical marijuana—with regulation rather than declarations of complete freedom for doctors and patients—and for limiting it to certain medical conditions.

At the same time, the 1996 votes have helped remind reformers of our common enemies. When an issue like allowing some patients to use marijuana, seemingly so peripheral to the broader drug policy debate, causes a panic among the drug war's partisans, it is worth asking why. One way of addressing that question is to speculate what might happen if voters approve every state initiative on medical marijuana (a total of four to six) this November. Could we expect anything like the over-the-top, multi-agency roar federal officials let out in 1996? If so, perhaps the drug warriors will further erode their credibility by fighting public wishes and denying patients a useful medicine.

The multi-state initiative strategy is designed, in part, to force or facilitate the rescheduling of marijuana, with the underlying risk of relieving pressure for reform.

Alternatively, the federal drug warriors might give in on medical marijuana, moving it to Schedule II or III so doctors could prescribe it, and thereby put a "friendly face" on prohibition, exactly as Thomas Szasz fears. The multi-state initiative strategy is designed, in part, to force or facilitate the rescheduling of marijuana, with the underlying risk of relieving pressure for reform. If federal officials choose to build a firewall behind medical marijuana, but in front of legalization, hopes for repeal of prohibition would dim.

But is it really plausible that the guardians of prohibition would make that move? The ban on medical use of marijuana is rooted in the restrictions established by the 1937 law that banned recreational use, a mistake Congress failed to fix when it rewrote the drug laws in 1970. Compelling studies of marijuana's therapeutic potential in the late 1970s and early '80s did not affect federal policy, so it is difficult to believe today's proclamations that science will resolve this issue. The evidence suggests that the drug warriors believe prohibiting medical use is crucial to the overall policy of intolerance toward marijuana.

If the problem is ideological, it may be impossible to get a concession. The never-ending frustration of medical marijuana advocates is that the drug war can't seem to accommodate a modest reform like making cannabis available by prescription. By the same token, such a reform could be devastating to the war on the drugs. That, at least, seems to be the understanding of hard-core drug warriors.

Whatever the federal reaction, the fight for medical marijuana offers benefits that abolitionist critics often overlook. In addition to being a compassionate step in itself, changing state laws on medical marijuana tends to put the right issues into play and

the right people on the defensive. It raises questions about the nature of drug prohibition and the rationality of its enforcers. It enhances the credibility of reformers and attracts allies who may ultimately be persuaded to support more radical change.

With those benefits in mind, medical marijuana initiatives should neither stoke nor calm fears about the medicalization of drug policy. Permitting the medical use of marijuana does not, as Thomas Szasz has written in *Liberty*, endorse the "fiction that self-medication is a disease" or declare "punishing it a treatment." The mechanism for allowing medical use is to carve exemptions into existing criminal laws. That seems to reduce the power of the state, especially since it forces those charged with implementation to change their tactics, sometimes fundamentally. Police in California, for example, are learning that marijuana they seize may be someone's medicine, in which case they have to give it back.

If opponents of the drug war want to have an impact, rather than focusing on the perfect policy or waiting for revolutions in the public's thinking, we have to reach out to new people, find working compromises, and advance concrete proposals. Proposals rooted in medicalization concepts currently have the greatest public appeal, notwithstanding the recent vote in Washington state. The more moderate and sensible our proposals seem, the better our chances of success. At the same time, if it is true that any successful challenge to the drug war, even on a relatively narrow issue, threatens an overly rigid paradigm, so much the better. We can't count on overthrowing the generals with modest peace offerings. But in the very strange world of U.S. drug policy, it just might happen.

Dave Fratello, previously with the Drug Policy Foundation, is communications director for Americans for Medical Rights, a Los Angeles–based group that ran California's Proposition 215 campaign and is sponsoring medical marijuana initiatives in several states.

Medicalization and Scientism

By John P. Morgan

Medicalization—the idea that drug consumption can be understood by a scientific assessment of what drugs do in the body and brain—is not new. Many physicians in the late 19th century tried to explain heroin or morphine addiction as a kind of allergic reaction: The repeated injection of opiates permanently changed the user's physiology, creating an illness requiring lifelong use of the drug.

Today, medicalization relies on apparently scientific explanations of the neurobiological mechanisms underlying addiction. Research in this area is increasingly complex, if not abstruse, and journalists look to the investigators themselves to explain how important and revealing it is. These scientists take a pharmacocentric approach, focusing on the drug as the cause of behavior and ignoring other factors. Their reports are scientistic, using the neutral language of neurobiology to disguise value judgments. Investigators usually assert that results from animal or cell-culture experiments are clearly relevant to humans. Indeed, they often claim that a given study "proves" the existence of a human drug reaction that cannot be found among humans.

Two highly publicized studies reported in the June 27, 1997, issue of *Science* illustrate these tendencies. In one, Fernando Rodriguez de Fonseca and other investigators at the Scripps Research Institute in La Jolla gave rats daily injections of a synthetic drug resembling delta-9 tetrahydrocannabinol (THC), the main active ingredient in marijuana, for two weeks. Then they gave the rats a cannabinoid antagonist, which stripped the THC-like drug from its receptor sites. This provoked a withdrawal syndrome lasting an hour or so, featuring tremors, hyperactivity, and defensive posturing. The researchers also measured increases in brain concentrations of corticotropin-releasing factor (CRF), a neural hormone. Such increases have been seen in rodents undergoing alcohol and heroin withdrawal.

The study and an accompanying editorial said these findings confirmed cannabinoid withdrawal *in humans* and provided evidence that increases in CRF create anxiety that drives marijuana users to ingest other drugs. De Fonseca et al. claimed their study therefore offered support for the "gateway" theory, which says smoking marijuana leads to the use of cocaine and heroin.

In the second study, Gianluigi Tanda and other researchers at the University of Cagliari in Italy measured the release of dopamine in the mesolimbic area of the rodent brain following injection of THC, a THC-like synthetic, and heroin. Neurobiologists have long wondered if cannabinoids raise extracellular dopamine in this brain area because such increases are triggered by many drugs that humans use for pleasure, including heroin, alcohol, amphetamine, nicotine, and cocaine. Prior to the Tanda study, evidence of dopamine release caused by injection of cannabinoids was equivocal.

In their report, Tanda and his colleagues unhesitatingly compared marijuana to heroin and, like de Fonseca et al., invoked their rodent findings as evidence for the much-discussed gateway theory. They speculated that marijuana use, by increasing dopamine, "primes" the brain, so the dissatisfied cannabis smoker will be drawn to heroin for the familiar dopamine rush.

Both studies were widely covered in American newspapers, framed in just the way suggested by the researchers. Their extrapolations to humans were reported without qualification, and their results were described as "new evidence" of marijuana addiction and a gateway effect.

This unscientific interpretation ignored the findings of prior research involving both animals and humans. Rodents and primates will not self-administer THC or other cannabinoids even when they have been primed with repeated injections and abrupt withdrawal. Simply put, these animals do not like pot; they find small doses unappealing and large doses aversive. Hence the de Fonseca study, in which the researchers went to great lengths to precipitate a short-lived cannabinoid withdrawal reaction in rats, has no obvious relevance to animal behavior, let alone human use, which typically involves smoking small amounts of cannabis episodically, with THC declining slowly after each session.

De Fonseca et al.'s most egregious extrapolation was their speculation that cannabis smokers move to other drugs because

of the "anxiety" seen in withdrawal. It is difficult to show any marijuana withdrawal phenomenon in humans, and I know of no study that links cessation of cannabis use with the use of other drugs. Yet somehow the release of a neural hormone in rats signaled to the researchers that human cannabis users suffer abstinence anxiety that they try to alleviate with cocaine or heroin.

Similarly, it's hard to know what to make of the dopamine increases found in the Tanda study, since rats do not actually like cannabinoids. Earlier research in this area was based on the theory that *reinforcing* drugs raise dopamine levels. Now we have an experiment linking increased extracellular dopamine with a compound that is *not* reinforcing in rodents and has not been shown to be an important drug of dependence in humans. There are many drugs that increase extracellular dopamine which humans do not find attractive, including levodopa, tricyclic antidepressants (Elavil, Tofranil), and anticholinergics (atropine, Artane).

These attempts to scare people about marijuana through animal studies, because actual human experience with the drug is not alarming enough, suggest the pitfalls of the biological reductionism on which medicalization depends. Where medicalization is the practice, scientism is the theory.

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Show Me the Data

By George D. Lundberg

My personal activities in the field of substance abuse go back about 30 years to my time as a faculty member at the University of Southern California in Los Angeles. I am, by training and experience, a forensic pathologist and a toxicologist. The 1960s in Los Angeles were the early heyday of our modern drug abuse epidemic and provided a natural laboratory for studying voluntary human street drug experimentation, informing the academic and clinical fields, albeit with great pain and sadness.

I define *drug* as any chemical which, when administered to a living thing, produces an effect. I define *drug abuse* as the use of a drug in a manner that is likely to cause harm. This definition deliberately ignores law and medical practice because most drug abuse is legal (alcohol and tobacco) or within the bounds of medical practice (e.g., prescription sedatives). For practical purposes, drug abuse is confined to psychoactive drugs, which are chemicals that affect the way a person thinks, feels, or behaves. Drug use is not necessarily a problem; harm from drug use is the problem. Of course, you cannot have drug harm without drug use, but you can have drug use without drug harm.

We in the new group called Physician Leadership on National Drug Policy (PLNDP) believe that scientific evidence should drive American drug policy and that up to this point it has not. The PLNDP is a group of leading physician activists and pragmatists who intend to work with the public and with policy makers to improve the lives of our patients and our communities by reducing drug harm.

These attempts to scare people about marijuana through animal studies, because actual human experience with the drug is not alarming enough, suggest the pitfalls of the biological reductionism on which medicalization depends. Where medicalization is the practice, scientism is the theory.

Chronic psychoactive drug use can lead to addiction, which is a chronic illness. Addiction does not go away. Physicians don't always strive for cures. We generally don't cure hypertension, arthritis, diabetes, or asthma, for example, but we can medically manage them quite well. The same is true with chronic chemical addiction. We cannot cure it, but we can manage it, often successfully, at a reasonable cost to society.

We in the PLNDP believe that when one considers the tens of billions that our federal and state governments spend each year on drug control, we should be getting better results. We should be applying principles of scientific evidence to the various methods available to intervene in the drug field—for primary prevention, secondary prevention, treatment, and rehabilitation. Available evidence strongly suggests that emphasizing source control, interdiction, and domestic enforcement—methods that account for 75 percent of drug control spending—is a very inefficient strategy. It is clear that the government is throwing large amounts of taxpayer money away each year. We don't have all the answers yet, but we do know that proven treatment methods offer a more cost-effective alternative.

Drug law enforcement has a place, but not necessarily the premier place, because the evidence does not support that approach. Now that the U.S. military (of which I was a loyal full-time member for 11 years) has run out of real wars to fight, it is getting involved in phony wars on marijuana fields in Mexico and coca fields in Bolivia. Let's stop playing drug war games. They are no longer entertaining, and they don't work.

George D. Lundberg is editor of The Journal of the American Medical Association.

Defending the Public Health Trademark

By Ernest Drucker

Public health is concerned with the well-being of populations and therefore shares with medicine the goal of reducing suffering due to disease. But its "patient" is the community and its measure of successful "treatment" is the reduction of collective morbidity and mortality, usually measured in terms of prevention. Indeed, clinical medicine exists as a function of public health's failure: It treats the casualties of unhealthy social policy and poor public health practice.

The problem with public health comes from its close historical association with clinical medicine, i.e., an over-reliance on the disease model. While a perfectly appropriate way of understanding the course and characteristics of individual illness, the disease model is only a small part of what is required to appreciate the complex biological and social circumstances that contribute to morbidity and mortality. Many critics of the public health perspective fail to distinguish its perspective from that of medicine. Workplace injuries, highway accidents, and home poisonings are not diseases, but they are well understood (and prevented) using a public health model.

When it comes to drugs, public health data usually focus on the most negative outcomes (disease and death) and the "hard realities" of drug use: addiction, overdose, AIDS, crime, domestic violence. But this is only part of the picture. In the vast majority of cases, the positive aspects of drug use, such as psychological benefits and social involvements, outweigh any harm. Because of the stigma attached to illegal drug use, these "soft realities" are largely ignored in public discourse. But they can be inferred from public health data.

While tens of millions of Americans have used illicit drugs—70 to 80 million marijuana, 40 million cocaine, and 20 million heroin—the number of heavy or problematic users is only 5 percent to 10 percent of those figures, similar to the proportion seen with alcohol. Public health data on moderate alcohol use (one or two drinks per day) suggest it is not only harmless but actually beneficial. I suspect a similar case could be made for other drugs, which are often used (successfully) to "self-medicate" anxiety, depression, and attentional difficulties.

Through public health data we can also see that, despite an overall reduction in the number of drug users during the most vigorous prosecution of the war on drugs, from 1972 on, the *consequences* of drug use have generally gotten worse: There has been an absolute increase in drug-related health problems such as AIDS and overdose deaths. Meanwhile, the huge economic and social costs of massive incarceration and criminalization associated with drug prohibition generate a cascade of adverse consequences in the targeted communities. These are consequences not of drug use but of drug policy. And it is public health methods that make them visible to the naked eye.

So who could be against public health? Well, for a start, our gracious editorial host, Jacob Sullum. His forthcoming book about America's current "war on tobacco" bears the subtitle *The Tyranny of Public Health.* The phrase is provocative, suggesting that public health could operate contrary to the public interest, and possibly oxymoronic, since most of us who work in the field are impressed by our relative powerlessness to affect policies. But it does capture something of the battle for the right to use the "trademark" of public health: One can cite many moralistic (and often useless) restrictions imposed on victims of past epidemics in the name of public health, or the contemporary use of imaginary or overblown health risks to exert social control, as in bans on smoking in outdoor spaces.

Public health data on moderate alcohol use (one or two drinks per day) suggest it is not only harmless but actually beneficial. I suspect a similar case could be made for other drugs, which are often used (successfully) to "self-medicate" anxiety, depression, and attentional difficulties.

On the face of it, any public which is fully and accurately informed of a serious risk to its collective well-being may fairly decide that it wishes to protect itself and restrict the freedom of some individuals to achieve that goal. But if the advocates of drug prohibition want to justify their position on public health grounds, why do they consistently overlook public health data suggesting measures that might actually save lives? The continued ban on the use of federal funds for needle-exchange programs, for example, defies a large body of scientific literature demonstrating their efficacy and ignores the recommendations of multiple expert commissions. As a consequence of this failed policy, my colleague Peter Lurie and I estimate, 10,000 to 20,000 preventable AIDS cases have occurred in the United States.

The message of history is that most people are willing to forgo some individual freedom for the larger good if the threat is real, the process is fair, and the response is effective at saving lives—as with confining or isolating carriers of easily infectious diseases such as typhoid or bubonic plague. These examples seem to me the opposite of tyranny. But current attempts to justify our demonstrably unhealthy drug policies in public health or medical terms make a mockery of both professions, whose best efforts are sorely needed to deal with our all-too-real drug problems.

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Who Killed Culture?

From barbarism to democracy, elites seek a suspect in the reported death of art.

By Charles Paul Freund

Lower your voice and show some respect: America's cultural establishment has collapsed in mourning. Even in the best of times, the nation's elite culture regards its health as fragile and its future as doubtful. But now it sits in doleful misery, its tunic rent and ashes sprinkled liberally on its bowed head. What happened?

Bad news indeed: The cultural establishment's last line of defense—the National Endowment for the Arts—has been routed. Now nothing stands between art and barbaric pillage.

Truth is, one piece of bad NEA news came after another last fall, rather like Job's servants arriving in relays to report his compounding ruin. First, the House of Representatives voted to kill the NEA entirely. The endowment survived thanks to the Senate, but its budget was again cut, this time to $98 million, a reduction of $78 million since 1992. Then, the Hill gave the NEA permission to pursue additional private funding—in effect, a license to privatize. To the high priests who tend culture's flame, this is tantamount to defilement, because private funds have private interests attached to them. Then, NEA head Jane Alexander announced that, after four years in the role, she'd had enough and was returning to

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acting. Alexander is probably the most effective lobbyist the NEA has ever had, and has been instrumental in keeping the endowment alive in the face of congressional hostility; her departure was perceived as a setback for federal patronage.

But the worst blow to American high culture was self-inflicted. In October, the NEA released a report on the state of the national arts, *American Canvas*, that was intended to celebrate Alexander's leadership. It is an incoherent document, on the one hand rejecting commercially generated culture while, on the other, accusing the high-end cultural establishment of failing to serve a popular audience. Worse, not only did *American Canvas* discern an undemocratic "elitism" among America's artists, it sought to subordinate cultural activity to modish social metaphysics, especially such values as diversity and multiculturalism. That report naturally offended those who have been contemptuous of federal cultural management all along.

Having given over art to the state to protect it from the seductive wiles of profit, elite critics were shocked to discover that art had commenced sleeping with politics instead. The Vestal being debauched, all that remained was to wall her up and to prepare for the coming onslaught of barbarism and bad taste.

But it also offended many of those who have looked to the endowment as a sanctuary for "serious" artistic expression, for "quality" freed from pandering commercialism. Now, from the NEA's own point of view, art has been joined to an ethnic census of those producing it. And because the NEA report sees art manifested in such entertainments as children's face painting, culture becomes divorced from either "seriousness" or "quality." A number of pro-NEA critics looked at the report, saw betrayal, and donned sackcloth. Having given over art to the state to protect it from the seductive wiles of profit, they were shocked to discover that art had commenced sleeping with politics instead. The Vestal being debauched, all that remained was to wall her up and to prepare for the coming onslaught of barbarism and bad taste.

Published reaction to this chain of events makes for useful, if often startling, reading. A series of essays, half-funereal and half-forensic, have appeared that are noteworthy for two elements: their often seething anger and their attempt to cast blame for this perceived cultural disaster. In their effort to determine just who is killing high culture, critics have rounded up some interesting suspects. Here's an abbreviated line-up:

◆ *Barbarism.* This is playwright Tony Kushner's suspect, as identified by him in a perfectly furious essay published in the *Los Angeles Times*. To Kushner, NEA beneficiary and author of the immense commercial and critical success *Angels in America*, "our choice" as a society is "really the NEA or barbarism." The role of government, he writes, includes "guaranteeing a decent standard of life for all citizens, which standard must include both breathable air and accessible, serious art." That is why "the fight for the NEA is, at its core, the fight for America's political soul, our identity." Kushner believes that the NEA's response to its critics has been too soft, or, as he puts it, "blasé." The endowment shouldn't be prattling on about elitism and funding alternatives; it should be demanding ever more government money in the name of civilization. Instead, its report is an exercise in complacency, and "isn't complacency a declaration for barbarism?"

Kushner feels no need to define what he means by "barbarism." And in a way he doesn't have to, because the warning of the barbarians' approach is among the oldest complaints in cultural history. It dates back, most famously, to the Roman poet Juvenal, an embittered and perceptive curmudgeon who, in the first century A.D., introduced the phrase *bread and circuses* to the Western litany of alarm about the dangers of satisfying mass desires.

Cultural historian Patrick Brantlinger, who has traced the history of the idea of mass culture as social decay from antiquity to modern times, terms the concept "negative classicism." Give the masses what they want, goes this argument, and their low, bloodthirsty characters will overwhelm the better sort of people and eventually destroy civilization. The screaming vulgarians who packed Rome's arenas paved the way for the collapse of that mighty empire; their modern, mass-audience counterparts, gorged on cynically made-for-profit entertainments, are undermining our own society.

(It's worth mentioning in passing that the lavish distribution of grain and the infamous "games" and "contests" of Rome were state programs intended to control the populace. The spectacles were hugely expensive, and helped ruin those who had to pay for them. Had Rome's culture actually operated on a for-profit basis, the bloody arenas might never have existed. In fact, Rome did develop a nascent market culture in its famous booksellers and mimes, though it failed to develop the idea of authors' rights that would have encouraged that market's development.)

Kushner's nearest formulation of negative classicism is in the form of a largely unintelligible question: "[A]re we going to continue on the path of surrendering more and more of our vital, social, communal strength, health and will to an ego-anarchism...serving the mad profiteering of a monied elite?" The problem with critiques of mass culture that demonize the producer is that, in seeking to exclude the mass audience from blame, they necessarily deprive it of will. The struggle for culture is therefore reduced to a pair of small, warring camps: mad profiteers vs. the enlightened, nonprofit NEA. More money equals salvation for the NEA, art, and civilization. How much money Kushner doesn't say, but the European example of state-

supported culture may give us an indication.

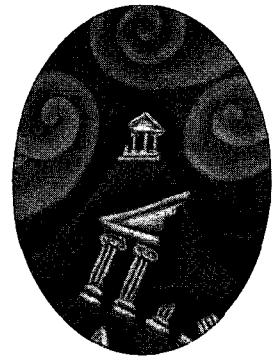
The NEA has never spent more than about 64 cents per citizen to improve our cultural lives. France, on the other hand, spends $32 per Frenchman for the same purpose. Yet France is filled with cultural elites who sound even more desperate than Kushner does. They complain bitterly not only of a rise in domestic barbarism but of American cultural terrorism and imperialism too. Anyway, given that elites have been raising the alarm about the barbarians for 20 centuries, it is unlikely that such brutes are the proximate cause of the NEA's woes. But there are other suspects.

◆ *Democracy.* This is the culprit fingered by *New York Times* critic Edward Rothstein in an extraordinary manifesto-like essay. Rothstein, deeply offended by the NEA's accusation of arts elitism, fired back that the arts were *supposed* to be elitist. Art, he wrote, is "an essentially undemocratic achievement by extraordinarily gifted individuals." The "real problem" with the 30-year-long NEA debate, according to Rothstein, "might be called the 'ideology of democracy.' In this vision of the world, not only are all people created equal but so are all ideas and all cultures," the antithesis of artistic discrimination. "There are differences between us at birth that the civil order must ignore but the esthetic order is beholden to," he argued. "Even the evaluation of art is guided by such undemocratic gauges as cultivated taste and extensive experience."

This is an elitism of such purity as to inspire awe. But in the course of making a number of reasonable points (about, for example, the necessity of distinctions), Rothstein makes a pair of serious errors. The first is that he imagines himself in a debate with democracy. He's not; he's in a debate with other elites who have gone slumming in multiculturalist dogma, and who have gained ascendancy in a number of cultural institutions. The second is that while he characterizes democracy as an ideology, he regards art as an unchanging state that can be appreciated best by those with sufficiently refined sensibilities (such as himself). But art is not a state of being; it too has a significant ideological dimension, and that is as true for the elitist concept Rothstein is championing as it is for any other.

In fact, the system of fine arts as we understand them arose only in the 18th century. Poetry and drama, of course, extend to antiquity. But the ancient world understood the arts in quite different terms. Rhetoric was an art. Medicine was an art. Magic was an art. Indeed, anything that had to be learned systematically and had an effect on others was regarded as an art. Nor did the Middle Ages share anything like our notion of the fine arts, according to art historian P.O. Kristeller. Thomas Aquinas, for example, identified the arts as including cooking, shoemaking, and juggling. Imitative arts such as painting and sculpture were never grouped together conceptually or understood as such. Even Renaissance ideas of art differ significantly from our own. Leonardo Da Vinci regarded painting and mathematics (but not architecture) as being of a single class of activities, while others compared music to fencing and equestrianism.

One may well argue that the modern concept of imitative fine art has more coherence. (Or maybe not: There's a good case for re-evaluating mathematics' aesthetic dimension, not only for its relationship to harmony and proportion, but on its own, ever more expressive terms.) But there is no question about where the modern idea of fine-art appreciation ultimately comes from: It was created by the 17th-century European aristocracy. That group's understanding of art was based less on artistic expression than it was on the leisure class's refinement of character. In other words, the mere creator was secondary to the noble beholder.



Court life of the period was heavily influenced by the concept of the "courtier," especially as described by the diplomat and writer Baldassare Castiglione. This was a culture that celebrated the "arts" of studied behavior: mannered conversation, *baisemain* seduction, graceful athleticism (thus fencing), and an aestheticism based on the refined contemplation of art objects. That contemplative art culture operated according to rules described quite well by Rothstein. It was a culture in which the evaluation of art was guided by such undemocratic gauges as cultivated taste, extensive experience, and other marks of the leisure class.

The accelerating growth of markets in the 18th century shifted cultural power from the court to the city, invigorating the very idea of culture. But while the market proved itself an engine of creativity, it emerged as the enemy of courtly "refinement," an idea that has survived. The rising capitalist bourgeoisie, in its effort to ape the old aristocracy, fashioned its own ideal of the "gentleman" largely from courtier leftovers. Its embrace of contemplative art and "refined" taste as standards of civilization is the foundation for the entire edifice of the elite arts as we still know them, from galleries to museums to endowments.

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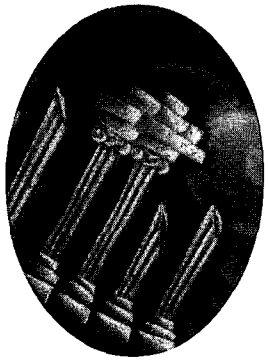
Rothstein is eloquently supporting a rich creative and critical tradition that has developed in many interesting directions. But there is nothing universal about that tradition. And contrary to his assumptions, culture isn't a fixed, unchanging condition. Nor is that his last mistake.

◆ *Equality.* Rothstein argues that artists are persons apart from the mass and deserve to be treated as such. In this, he is joined by *New Republic* theater critic Robert Brustein.

Brustein believes that it is outrageous that creative people should have to waste their time seeking money, that they have "to interrupt their creative labors to write, phone, fax and otherwise dun their political representatives" for continuing public funding. Such people, he argues, are a necessary and indispensable elite. "Without an elite in the arts, we have no leaders, which is to say we have no vision, which is to say we have no arts." Every possible accommodation must be given to such people, especially grants of money.



The New Republic*'s theater critic Robert Brustein believes that it is outrageous that creative people should have to waste their time seeking money, that they have "to interrupt their creative labors to write, phone, fax and otherwise dun their political representatives" for continuing public funding.*

Artists *are* persons apart, of course. That said, it may be that others—non-artists—are entitled to make a similar claim. Nor is it clear, from one generation to another, who gets to be regarded as an artist. Certainly, artists satisfy a profound and demonstrable need for narrative and representation, sometimes inspiring centuries of passionate admiration and often creating the only lasting artifacts of their epochs. Still, the notion that self-identified artists must be on the public dole for *our* good as much as theirs is an entirely modern conceit.

Our cult of the artist is really a 19th-century phenomenon. Bereft of their aristocratic patrons—who had treated them with little respect or regard—Parisian artists in the wake of the French Revolution set themselves up as wild-man eccentrics, earning the nickname of "gypsies" or, in the French-derived term, "bohemians." Of course, there were always such fringe groups; the poet Horace describes figures in ancient Rome who seem recognizably bohemian. But the 19th-century appearance of these figures in an industrializing Europe coincided with the rise of a middle class made wealthy through trade and hungering for status. The deal these groups struck—the new-monied class underwrote artistry, thereby buying itself social position through "connoisseurship"—is mistaken by some for an iron rule of culture.

The manner in which this drama played itself out in the United States at the time set the terms of our contemporary debate. Just when popular American taste was challenging the entrenched cultural elite of the early 19th century, a class of merchants arose who, once they'd made their money, determined to use their fortunes for the benefit of *culture*. They established American business patronage, underwriting national artists, importing foreign *objets d'art*, lobbying for a national gallery, and laying the groundwork for a tradition of social and cultural philanthropy that lives on to this day in such organizations as the Rockefeller Foundation, the Getty Trust, and the Aspen Institute. But it is their *attitude* toward high culture that has cast the longest shadow. To quote the grocer Luman Reed, who when he died in the 1840s was supporting numerous painters and had become the first American to build a private gallery as a shrine to the cult of art, "[T]he artists are my friends, and [my money] is the means of encouragement and support to better men than myself."

Luman Reed's humble, hat-off attitude in the presence of self-proclaimed artistry is now equated by the cultural establishment with taste and social duty. Where did such a perception come from? The bohemians, Romantics, Decadents, and other anti-materialists advanced an image of the artist as a visionary who lives outside time. This construction of the artist, while immensely successful, is wholly unhistorical; art has more often been understood as the tool of its political, clerical, and bourgeois patrons. (Worse, this romantic construction inspired an often arbitrary critical history of art that has completely overshadowed the record of its actual, material development.) There is only one other period in which imaginative creativity has enjoyed the same quasi-mystical stature, and one has to go back to classical antiquity to find it.

The Greeks had a notion of poetry as divinely inspired by the Muses, a form of "divine madness" during which the poet was possessed by a holy daemon and was, literally, a person apart. This is not the invocation of the Muse one finds in Homer. Rather, the Greeks seem to have picked up art-as-madness later, from the shamanistic cultures of the Black Sea, and much of what we know about this idea comes directly from Plato's dialogue *Phaedrus*, in which Socrates delineates several kinds of madness, including the poetic variety.

The view of the poet as shaman has shown real resilience; its most eloquent modern defender was the 20th-century poet Robert Graves (who wrote his justly famous novels as money-making ventures to support his poet persona). At the least, the idea has considerable metaphoric appeal. After all, the psychology of creative inspiration remains materially unresolvable, a mystery in the classical sense of the term. Even so, the notion that daemoniac poetic possession is a phenomenon amenable to the federal arts bureaucracy is a subject fit for Juvenal and his bitter satirical sense.

Indeed, the Platonic view of the matter is worth lingering over as one of the supreme ironies in Western cultural history. Our original source for the mystification of art—Plato—is the same figure who banished poets from his ideal Republic. Although Plato apparently accepted the reality of poetic possession, he regarded it as inferior to reason. For Plato, reason too was a divine gift, another daemon, and a far superior one, according to classical scholar E.R. Dodds. To Plato, poets, daemon-infused or not, were to be shown the gate. These voluble figures—often unsure of the meaning of their own declamations—stirred public emotion when what was really wanted was tempered accord. They were thus

the enemies of those who could be trusted to run things well: truth seekers; the best people. And that brings us to our final suspect in the reported murder of culture.

◆ *Elitism.* This is the NEA's own culprit. By "enshrining art within the temples of culture—the museum, the concert hall, the proscenium stage," says the NEA's *American Canvas* report, "we may have lost touch with the spirit of art: its direct relevance to our lives."

Actually, everyone in this debate is targeting "elites" of one sort or another. Playwright Kushner attacks profiteers who constitute, in his view, a commercial elite muscling its way into the cultural sphere. Critics Rothstein and Brustein are both defending and celebrating what they perceive as an elite of talent and vision. They suggest that those who would criticize such an elite, and that now seems to include the endowment itself, are spiritual sans-culottes sneering at their betters.

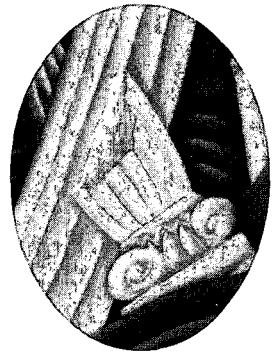
But what the NEA is addressing—at least in this portion of its otherwise incoherent argument—is neither money nor vision; it is addressing status. The sociology of art and culture has been largely ignored, but it is the key to understanding the mounting problems of the nation's cultural elite.

Members of that group have failed to understand what is happening to them. Their problem isn't that somebody (profiteers) or something (the marketplace) is *undermining* culture. Their problem *is* culture.

We are accustomed to identifying *culture* with the class that has long been its arbiter: the critics, publishers, editors, museum and gallery curators, theatrical impresarios, teachers, cultural historians, and others who have been the judges and gatekeepers of what is supposedly deserving, praiseworthy, and lasting, and what is merely "popular" and therefore disposable. The history of this class—and its power to dispose of the culture it deems inferior—is a very long one. In antiquity, for example, it created the Alexandrian Canon of 56 worthy poets, and the even more limited canon of the 10 Attic Orators whose voices we have been allowed to hear; we can only speculate on what has been lost as a result. (On the other hand, the old grammarians entirely ignored the popular Hellenistic proto-novelists such as Longus—from whose *Daphnis and Chloe* pastorale was born—that so influenced the Renaissance and ultimately our own literature when some of these works resurfaced.) The same class is still drawing up reading lists, only now their power of cultural enforcement is waning. Why?

The answer lies in the continuing diffusion of cultural power. When art moved from the court to the city in the 18th century (earlier in the case of Holland), the character of culture changed substantially. Creators were no longer beholden to their patrons; armed with talent (and developing copyright law), they could seek and address an audience of like-minded persons. They entered a market. This market could be both merciless and exploitive, but one result was an unprecedented explosion of creativity—fine, mediocre, and unspeakable—that is still continuing.

Another result, however, was the reorganization of cultural hierarchy. With the aristocracy irrelevant, a class of educated admirers—critics with cultivated taste—came forward to acknowledge the artists as visionaries and to offer themselves as their interpreters. This alliance of creators and critics, often in conjunction with business (later corporate) philanthropists making spiritual amends for their fortunes, has ever since been in control of the history, development, and instruction of cultural matters.



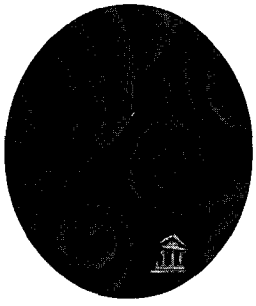
The history of cultural gatekeepers is a very long one. In antiquity, they created the Alexandrian Canon of 56 worthy poets, and the even more limited canon of the 10 Attic Orators whose voices we have been allowed to hear. Gatekeepers are still drawing up lists, only now their power of enforcement is waning.

This control has been based not on any temporal power but on the enormous status that the cultural establishment had been allotted by the middlebrows. Just as the new-monied classes of industrialism sought to ape the aristocracy above them, the emerging middle classes sought to ape the culture of the stratum over their own heads. Having achieved material well-being, the middle classes sought culture, and culture, they agreed, was whatever the high-end establishment of critics, curators, and so forth said it was.

Thus, whatever a middlebrow audience in the middle of the 20th century may have enjoyed watching, hearing, or reading, it acknowledged that it should know third-stream jazz or the 12-tone music of Schönberg when it heard it; that it should have an opinion about what, if anything, happened in a film like *Last Year at Marienbad*; that it should appreciate pointed eventlessness in the plays of Samuel Beckett (or even the impossibility of drama in the films of Michelangelo Antonioni); that it should understand why New York painters were attempting to achieve absolute flatness; and that it should sample the latest efforts of European writers to produce the New Novel. The question of enjoying such things was really not an issue, as it had been when the fine arts were defined in the 18th century; culture by mid-century had become a matter of modernist intellectual heavy lifting. The striving middlebrow audience in its heyday would have been quite willing to admit that, for example, those films it did enjoy were probably of no lasting value anyway, even as it scanned the movie ads for a blurb from a serious film critic advising readers of the latest, must-see work of significance.

But today's serious film critics are largely beside the point, and the art films they praise (including work by such adventurous Eastern European directors as Emir Kusturica) draw small audiences on those occasions when they can even find a distributor. Cable TV offers scores of services, but the only

dedicated elite cable service to survive is Bravo (and its Independent Film Channel). PBS's approach to opera is now dominated by famous tenors belting out show tunes in sports stadiums. Literary fiction is famous for being unread, and even new work by such established writers as Thomas Pynchon creates little stir, however enthusiastic the reviews. Popular magazines are devoting less and less space to writers and artists, and serious general interest magazines can no longer support themselves. The role of the elite establishment is visibly shrinking.



Cultural activity is becoming increasingly a private rather than a public matter. In private, people will immerse themselves in the culture they want. Thus culture—stripped of status concerns and reduced to authentic desire—is stranding elites in their own subculture.

Why? Cultivated elites are still there, but it is middlebrow culture that empowered them, and middlebrow culture is in steep decline. Technological innovation is redrawing culture's sociological map. Cable, VCRs, satellites, and the multidimensional changes wrought by the home computer have not only opened a vast array of new cultural choices to people, they are achieving something much larger: They are moving the consumption of culture out of the city and into the home. Cultural activity is becoming increasingly a private rather than a public matter, and the more culture is a private concern, the less status has anything to do with it. In private, people will immerse themselves in the culture they want. Thus culture—stripped of status concerns and reduced to authentic desire—is stranding elites in their own subculture.

What is going on at the top of the cultural ladder is even more obvious at the bottom, because at the bottom it isn't obscured by the elitist coverage of the surviving prestige press. At the bottom of the cultural hierarchy are such things as pornographic films. As recently as 20 years ago, porno films were a public issue. Their titles and contents were matters of public discussion, and the people who appeared in them could become notorious (as did Linda Lovelace) or even celebrated (as was Marilyn Chambers). But the VCR revolution has moved porno films almost completely into the home; they have less and less of a public dimension at all, beyond video store zoning battles. At this point, the films' makers and their audience constitute a self-contained subculture of interest primarily to themselves.

Something similar is happening on the top, avant-garde rung of the cultural ladder. (Indeed, exactly the same thing has happened to the once-lively repertory film circuit; classic films have become an at-home experience.) High culture, dominated, in the NEA's words, by the subsidized museum, concert hall, and proscenium stage, possesses its own obvious validity and exerts its own power. Whether anything happened in *Marienbad* may remain a legitimate cinematic question, at least as interesting as whether Agent Mulder is, yet again, dead. But there's no status cost in shrugging off such a question, and an increasing number of people have done so.

With cultural power dispersed, there are many such cultural subcultures asserting themselves. One man who recognized their validity long ago was sociologist Herbert J. Gans; he called them "taste cultures." In 1974, Gans offered a rare challenge to the standard cultural critique of negative classicism. There is nothing wrong, he argued, with a mass audience seeking pleasure in the mass media. It does not mean that that audience is to be despised, or that its imagination has been enslaved by cunning profiteers. It means only that different groups have different—and legitimate—cultural needs. Gans argued that the country featured numerous such cultures (he identified five, corresponding to class and income), and, in words that were to assure that his argument was completely ignored, added that "all taste classes are equal."

Gans was not suggesting that soap operas were interchangeable with Sophocles. But he did mean that measuring one by the other was a distortion of cultural reality, and in this he was right. Where he may have been wrong was to identify so few taste cultures and to suggest that people would spend their aesthetic lives inside only one. With gatekeepers gone and the gates wide open, people are as likely to wander around in many taste cultures; to move, for example, in both high art and pornographic circles. As historian Lisa Jardine points out, the Renaissance painter Titian, glory of Venice and purveyor of soft-core voluptuousness, was just such a figure.

As for those angry gatekeepers dressed in mourning, they might take comfort in contemplating their founding tastemaker, Baldassare Castiglione, and the fate of the courtier at the end of his world. Castiglione, arbiter of even-tempered cultivation and smooth wit, was also a man of worldly action—a papal envoy—and a disastrously bad one. His bumbling, based on conflating style with sincerity, was a factor in one of the great political and cultural catastrophes of his age, the terrible Sack of Rome in 1527. Revealingly, Castiglione emerged from that collision with reality by abandoning the very philosophy of character that so influenced later ages. The last letters he wrote before dying (of embarrassment, according to some) display a man of disfiguring temper and debasing bitterness. But then, the realization that the power of taste lies so entirely in the deference of others is an embittering epiphany. The last of the courtiers, his elegant progeny, are slouching off stage in bad temper. Give them credit for exiting in character.

Charles Paul Freund (cpf@reason.com) is a REASON *senior editor.*

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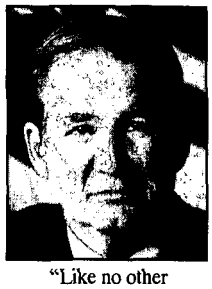

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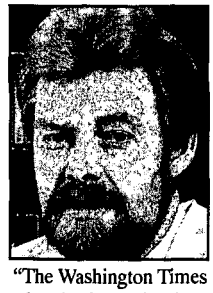

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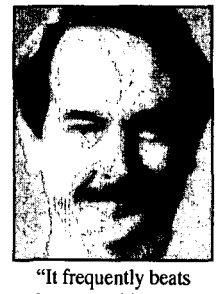

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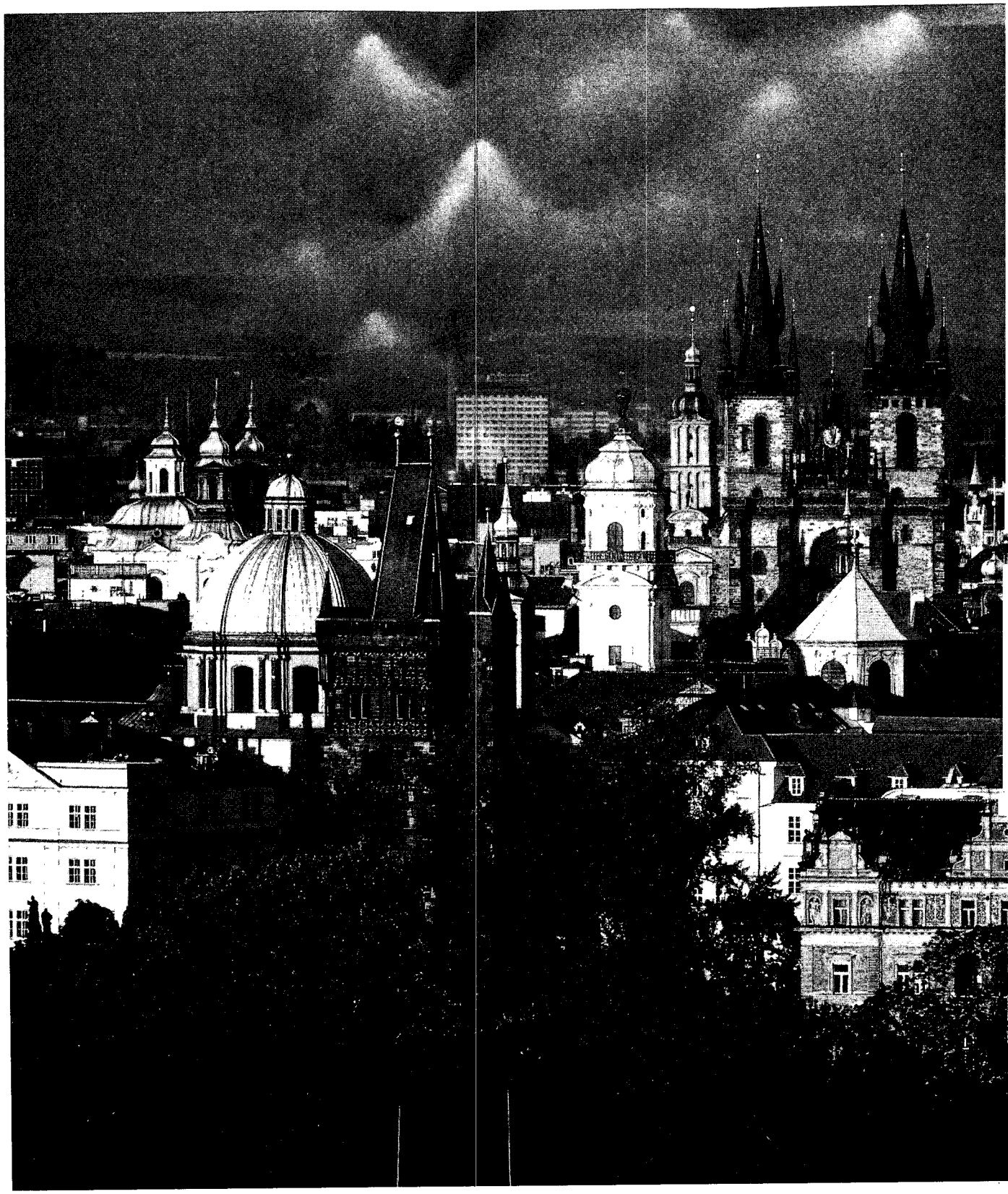
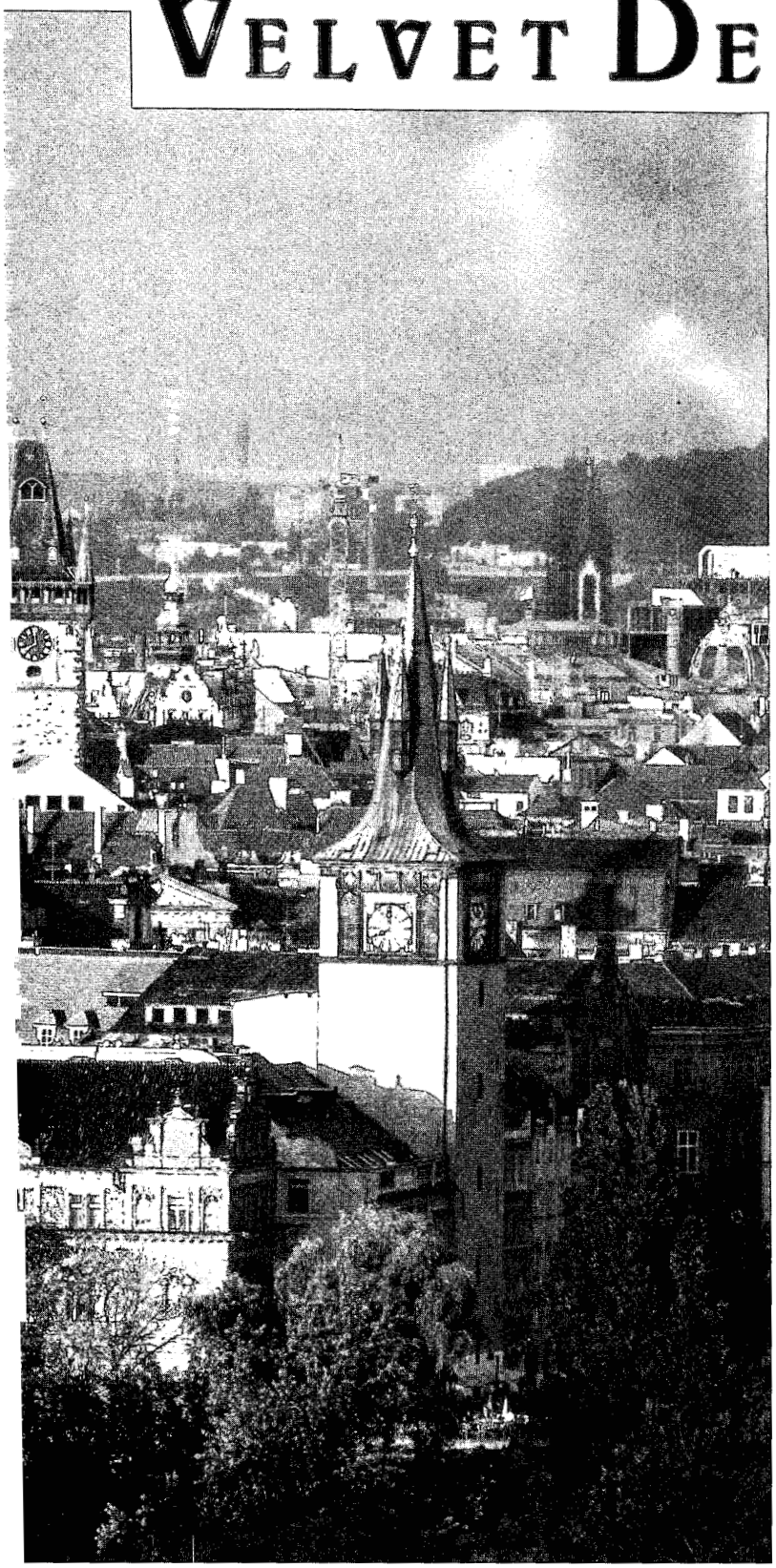


Velvet Devolution



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Is the "Czech Miracle" Over? Or still to come? A report from Prague.

By Thomas W. Hazlett

When the Velvet Revolution politely bid adieu to 40 years of Soviet-style socialism on November 27, 1989, the Czech economy hosted the most anemic private sector in the entire Eastern Bloc, producing just 3 percent of the country's gross domestic product. But between December 1989, when an obscure bank economist named Vaclav Klaus became the country's first post-communist finance minister, and March 1995, when the second of two waves of privatization was completed, the country was transformed. In 1995 three-quarters of GDP was generated by private firms. With an economy shifting into high gear, Prague a lively tourist mecca, an amicable 1993 "Velvet Divorce" from Slovakia, and a political stability rare in the region, citizens could be proud of the "Czech Miracle," as it was enthusiastically described in the April 1995 issue of this magazine.

But the Czechs' mood has now turned darker. Klaus, the financial guru who became prime minister in 1992, resigned in November amid what the U.S. press called "scandal and a slumping economy." His fall has triggered a wave of obituaries in the American media not only for the Czechs' once-vaunted economy but also for the free market principles Klaus propounded. Yet an examination of the Czechs' difficulties indicates that, while there are mistakes to overcome and problems to solve, the only real bankruptcy to be found is that of American journalistic vision, and the only real poverty that of the newspapers' economic understanding.

Certainly, the "scandal" half of the press's indictment was juicy enough. It revolved mostly around reports that Klaus's Civic Democratic Party maintained a secret Swiss bank account filled with money from investors who were purchasing privatization favors. In 1996, the Czech press got hold of a party report that attributed substantial donations to a pair of men in Hungary and Mauritius; the Hungarian, it turned out, had been dead for 12 years, and the Mauritian, while alive, had never heard of Klaus's party. Last November, a Czech entrepreneur who had won a stake in a privatized steelworks admitted that he was the source of the money. He denied he'd received any favors, but he did claim that Klaus had known about the money. Klaus disputed this claim, and his party split into squabbling factions. After Klaus's own finance minister threatened to go public with what he said were dubious privatization deals, his home was bombed. So much for political civility.

In the meantime, the country had been suffering a series of financial setbacks, including a plunging stock market racked by conflicts among stockholder interests in 1995 and 1996 and a currency crisis in May 1997, when a burgeoning trade imbalance produced a run on the Czech koruna. After an expensive attempt to defend a fixed exchange rate—in effect donating $3 billion in taxpayer funds to international speculators—the central bank gave up and let the currency fall, resulting in a 15 percent devaluation. The central bank was then forced to tighten monetary policy, and the country's economic growth dipped sharply: Projected 1997 GDP growth of 5.3 percent fell to 1.2 percent in the first half of the year.

The country's fiscal slowdown naturally produced political fallout. The government reacted clumsily, seeking to co-opt opposition cries for state controls. Klaus refused to step down because, he explained modestly, there was simply no one who could take his place. But under the combined weight of the scandals and the wheezing economy, Klaus's popularity plummeted, and finally—eight years and three days after the collapse of Czechoslovakian communism—his government was dissolved.

The reaction in the American press was not restrained. "Czech's Downfall Shatters Hope for Economic Miracle; Outgoing Prime Minister's Failed Reforms Viewed as Too Absolute, Arrogant to Succeed," *The Washington Post* concluded sternly. Economic reform and prosperity had been but a fantasy, realized *The New York Times*: "For the Czechs, The Fairy Tale Is All Over Now." The situation was even more terrifying than real life, according to a front-page feature in the *Chicago Tribune* published last summer: "Czechs' Economic 'Miracle' Looking More Like Nightmare."

The "Czech Miracle" was more heralded in its alleged death than it had ever been in life. But at least it didn't die alone. The *Tribune* declared a mass funeral for market forces. "[P]rime minister Vaclav Klaus had visited the University of Chicago and patterned his policies on the free-market teachings of the school's Nobel Prize-winning economist, Milton Friedman....Klaus once looked down on his neighbors Poland and Hungary, but now the economic boom is proving illusory....In the meantime, the University of Chicago is out of style in Prague."

Capitalism, one might easily conclude from all this, had been as much a bust in the Czech Republic as communism. So last fall I returned to Prague to see this purported collapse for myself. During annual pilgrimages from 1990 through 1994, I'd had the privilege of observing that glorious capital come roaring back to life after decades of Soviet-induced inertness. What had once been a city where a visitor had trouble finding a restaurant that welcomed customers or a shop that featured inventory was resurrected as a vibrant metropolis boasting superb dining and every consumer convenience, its once somnolent streets buzzing with commerce and ringing with Dixieland jazz.

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What I learned in Prague on this journey was a lesson very different from those blared in the American headlines. Rather than finding a nation of shattered hopes and punctured fairy tales, I found an upwardly mobile country that still exudes the enthusiasm of a dynamic people newly liberated. Far from finding a place trapped in an economic nightmare, I found a land

which still ranks at the very top of the "emerging nation" success stories.

It was impossible to miss the signs of lost economic momentum. The Czech economic trajectory, while still pointed up, is noticeably flatter than it was just a few years back. Even so, rather than discrediting all previous economic progress—as some Western press reports have perversely done—an investigation of the Czech situation reveals a rather conventional political failure, bred by an almost unique success and nurtured by the arrogance of power.

Indeed, the main source of difficulty in the Czech Republic now is the policy gridlock that followed the exhaustion of mass privatization from 1991 to 1994—just as Klaus and other advocates of "fast privatization" had predicted. Extending the economic reforms further and deeper, including the establishment of legal protections for capitalists and entrepreneurs, are the devilish details that have been left for a new government to deal with. Rather than demonstrating the shortcomings of laissez-faire capitalism, the current travails of the Czech transformation exhibit the dangers of letting communist-era institutions, including courts that fail to protect individual rights and a state that refuses to take responsibility for its actions, survive into the modern era.

Velvet Fog: Once a champion of "capitalism without adjectives," then Prime Minister Vaclav Klaus (right) defended state ownership of telecommunications and transportation companies in an interview last fall with author Thomas W. Hazlett (center).

Most troubling was that despite Vaclav Klaus's brave rhetoric and well-reasoned essays on the radical transformation to capitalism, and despite an impressive start on rapid privatization of large enterprises, the Czech reform program had largely ground to a halt after 1994. Klaus's explanation of this failure was defensive, evasive, and shockingly unpersuasive.

The irony is that Klaus had made himself famous as an economic Johnny Appleseed sowing one simple idea: The key to a successful transformation from socialism is speed. Momentum for reform would be lost in a "reform trap," he argued, if the interest groups that stood to lose were given the chance to forge alliances and amass organizational strength. Quick turnaround of assets from public to private was the only reliable solution. Failing to seize the moment would "prolong the pre-privatization period of agony," Klaus reminded the Czechs and the rest of us in his many speeches and essays in the early reform period.

His logic was not subtle. In an economic netherworld where state-owned enterprises are slated to be taken over by new private proprietors, the incentives and opportunities for looting are abundant. The classic scheme in Eastern Europe has been for a state manager to sell off the lucrative pieces of "his" enterprise to his brother-in-law's company at bargain prices, turning over a debt-ridden shell for privatization.

Resources are squandered in this process of asset stripping, and the public soon loses patience with such "pirate capitalism." Demand builds for beefing up state enterprises—a happy outcome for the *apparatchiks* who control them—and liberalization slows. Russia has vividly demonstrated this cycle of reform and backlash, and countries throughout the region have shown how quickly anti-capitalist parties (including former communists) can gain the upper hand.

But what happened in the Czech Republic was very different. Price liberalization and economic deregulation were quickly followed by a large restitution program and privatization of small enterprises: Twenty thousand restaurants, printing shops, gas stations, and other "mom and pop" businesses were auctioned off under the authority of local governments in 1990–91. Then the Czechs proceeded rapidly—some said recklessly—with privatization of large businesses.

This is the heavy lifting in post-communist reform, because separating the assets and liabilities of major state enterprises is extraordinarily complex. In a world where no operations went bankrupt because they were all state-owned, firms lent each other money willy-nilly. Good loans? Bad loans? Hey—we're all one big happy mega-state. Who's responsible for environmental liabilities? Pensions owed? Accounts payable? Not even your Excel-crunching CPA wants a piece of this action.

The Czechs cut this Marxist knot by sponsoring two ingeniously crafted competitions for the two "waves" of large-scale

privatization in 1992 and 1994. The Ministry of Privatization required each of the 4,000 or so major state enterprises to file a privatization proposal describing the firm's asset base, its business plan, and the optimal means of privatization. (The proposals included various means of assigning equity, but shares in a newly private company were often set aside for "voucher privatization," wherein stock shares were distributed to the three-quarters of Czech adults who bought coupon booklets for the nominal sum of $35.) Then, with very short deadlines to limit mischief or delay, competing proposals were entertained by the ministry. The 20,000 proposals it received composed a database that allowed it to go where no government had gone before: turning most of a country from state socialism to private capitalism in under four years.

What happened next involved sins of omission and commission. What Klaus's government missed, at least in part, was the importance of property rules that went beyond the initial distribution of equity shares to private owners. Klaus had assumed that rules would develop spontaneously to create a vibrant capital market, and he was not far off—not nearly so far off as *BusinessWeek* was in its December 15, 1997, issue when it dismissed the Czech financial markets as "another place where free-market rhetoric went haywire."

But Klaus did not recognize that the new economy needed a new legal structure to spark spontaneous order. Unconventional approaches such as "one man, one share" successfully moved huge state-owned enterprises into private hands. But this could be accomplished only through rules that explicitly did *not* respect property rights: Government bureaucrats were called on to create ownership, cancel old assets and liabilities, and then distribute the new shares like the Tooth Fairy. Once those private rights were out in the marketplace, however, a new system was required to define what private ownership really meant.

In your standard-issue capitalist economy, shareholders have strong assurances that managers, or those who own more shares than they do, won't steal them blind through the sort of insider schemes for which socialist enterprises have become notorious. This is because firms, to attract equity investors *to begin with*, have to convince people that they will utilize funds for the good of all stockholders. Through a combination of private law (corporate charters), capital markets, and public rules (including courts to adjudicate fraud and embezzlement), corporate agents have incentives to treat your invested capital like it's yours and not theirs.

But while the demand for transparency and integrity operates powerfully on firms that must attract investors, the newly minted Czech firms were created out of thin air (or, rather, a dense communist fog). No corporation had to attract fresh capital to get going. Hence, a different set of incentives were in place. Many firms, focusing on growth, behaved pretty much like firms in developed economies, taking pains to protect the interests of their shareholders in the hope of attracting more investors. In some situations, however, managers or a majority of shareholders found that, without much trouble from the legal system, they could transfer company assets to other corporations which they alone controlled. This effectively cashed out the minority shareholders.

Under such circumstances, the Prague stock exchange has not done well in recent years: The PX50 index, set at 1,000 when trading began in 1993, hovers at about 500 today, the main problem being investor uncertainty about protection of minority shareholders. As Tomas Jezek, chairman of the Prague stock exchange, notes, "There have been too many cases of disappearing value because assets were stolen. The success of fast privatization risks being lost if the government is unprepared to protect private property."

The failure to establish a new legal framework for ownership is particularly glaring in the case of bankruptcy laws, which were suspended altogether for two years during mass privatization. This was, perhaps, a logical thing to do in order to prevent reform from drowning in a sea of litigation. But no comprehensive bankruptcy law has yet been crafted, and the current procedures lead to very confused and lengthy litigation. The incentives created by the delays and confusion are clear: "Clients know how to shift assets to create new companies," asserts one Czech economist.

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A related failure involves the simple establishment of the rule of law—well, simple to you and me, safely tucked into a cozy Western bed every night. In a country without an independent judiciary—indeed, where the judicial system is widely feared and distrusted (and widely disobeyed, a holdover from the hostility courts engendered during the days of communist rule)—enforcing the law isn't so simple.

Consider a civil lawsuit in the courts right now. The case springs from an instance in which an investment fund was robbed of $870,000 in assets when the securities registration agency wrongly issued fund shares to some guy who showed up with a fake passport and a forged letter demanding them. The embezzler was never captured, but he did manage to sell the shares to new "investors." So the fund is suing the Finance Ministry, which supervises the official registry system. As cut and dried as the state's liability may appear, the case is being widely followed because it is unclear if the government will make good on its mistake. While the stock registry now uses smartcards and other devices to reduce fraud, uncertainty about investor rights plainly discourages capital formation.

While Klaus's initial reform program failed to adequately ensure property rights, his government seriously exacerbated the problem by putting the brakes on the privatization of key "strategic" sectors: the railways, telecommunications, airlines, petroleum refining, gas and electricity, and, perhaps most important of all, banks. Some Czech firms were exempted from privatization altogether, remaining in the hands of government ministries. Others, while turned into joint stock companies, continued to be closely tied to government by virtue of huge equity stakes deposited in the National Property Fund, a state agency managing the government's portfolio of privatization shares. (During the privatization of large enterprises, the Ministry of Privatization approved many plans that deposited substantial ownership shares in the NPF.) While state assets with a book value of some CZK341 billion (about $10 billion) were dispersed to citizens through voucher privatization, some CZK209 billion (about $6 billion) in assets remain in state hands. According to the NPF vice chairman, Petr Cermak, the state retains significant holdings in numerous industries (see table).

The Most Important Strategic Companies Held by the Czech Republic's National Property Fund

Company	Share in Government Hands (%)
Big banks	20–50
CEZ - production of energy	68
SPT Telecom	52
Unipetrol	63
Steel companies	53–67
Coal mining companies	45–54
Regional distribution companies - electric energy, gas	45–49
Radiokomunication Company	70
Czech Airlines	57
MERO - transition pipelines	100

Source: National Property Fund

Big Government Business: The state continues to enjoy huge ownership stakes in major companies and industries.

But it is the banks that are crucial to the overall health of the system. They dole out capital to the various sectors of the economy, largely determining which industries will grow and which will wither, which new technologies will be adopted and which will be rejected. The government owns 49 percent of the largest Czech bank, Komercni, and between 20 percent and 50 percent of the other major ones. Jezek, the stock exchange chairman, was minister of privatization in the first elected post-communist government, from 1990 to 1992. He says the status of bank privatization is just where it was "when I left the Privatization Ministry in June 1992. Klaus made no change—nothing."

Leaving the banks in state hands undermines efficiency throughout the economy, as money is invested not just in firms which promise to show the greatest productivity gains but in failing firms for political reasons. Letting the railways remain 100 percent state-owned, for example, allows an enormous amount of featherbedding. That deprives expanding economic sectors of affordably priced labor and limits international competitiveness (particularly problematic in the currency crisis spurred by a burgeoning trade deficit). Overall, restructuring—which, even more than in the West, is a euphemism for laying off unproductive workers—is slowed because no governing party likes unemployment. With unemployment only now rising to 5 percent, the government has been persistently criticized by *The Economist* for having too *few* people out of work. The alleged culprit: state-owned banks propping up economically shaky firms.

The effect of central banking is similarly problematic. The Czech government, like all others, protects liquidity in the banking system socially. Hence, the economic irrationalities of socialism, in which firms are bailed out of the consequences of bad decisions with subsidized credit, reappear. When banks are tied to the state via social ownership, their political clout lessens the independence of the central bank, distorting credit allocation. If a bad loan made by or to a politically important customer is guaranteed by the state, there is a clear moral hazard. Lots of inefficient (or corrupt) enterprises get the money; taxpayers (and efficient firms denied credit) get the boot.

As Alena Buchtikova, an economist at the Czech National Bank, explains: "The old big state banks were privatized only partially, and the state guarantees in these banks enabled the persistence of some of the old rigidities and inefficiencies." Banks faced new clients with no economic track records and felt political pressure from above; the result was "rather uncritical lending." The problem of bad debt began a spiral, with banks preferring "to extend credit to ailing firms, rather than enforce the credit contracts, in order to hide the real extent of the nonperforming loans in the banks' balances." By June 1996, an

astounding 39 percent of bank loan portfolios were "classified," meaning that "there exists uncertainty about their repayment."

Klaus's famous liberalism finally collapsed under the temptations of office. By the time he was forced to resign, he was barking at foreign investors and imposing government sanctions to keep wages in the private sector down. Even the opposition Social Democrats were complaining that 45 very large "strategic" firms held by the Klaus government should have been privatized long before. As economist Jiri Schwarz, president of the free market Liberal Institute, put it: "We are very happy with the progress we have made since 1989. But we are not at all happy with the progress we have made since 1994."

"We simply stopped," declares Jezek. He says Klaus "was interested in the transformation effect of privatization, and once that had been done, he declared it finished. It was only halfway accomplished." Jezek believes bureaucratic inertia—precisely the factor that Klaus described in 1990 as the "reform trap"—has overtaken the zeal to privatize remaining "strategic" industries. "Many people in control of the National Property Fund are simply not interested in finishing the job," he says. "They are on boards of directors and do not desire change. Government has not the dynamism and force to finish its task."

With serious problems still to be tackled, Klaus delivered no program. He barely survived a June 1996 election, having to form a coalition government with two other parties. Blaming his coalition partners, Klaus all but shelved further efforts at economic liberalization and declared the transformation complete.

is that great progress was made up through 1993 and 1994, but it seems that no progress has been made since."

Klaus: "That's really not true. [It] is a very simplified evaluation of events in this country. It is definitely much easier to start with the small privatization, to privatize small-scale businesses. It is simple, and it can be done in a very short period of time. The privatization of standard firms is more or less over....we are now privatizing with a much slower pace firms which are in [a] typical European country somewhere between the private and public sector. So, to privatize telecom, to privatize railways, to privatize nuclear power stations, to privatize some network industries in the distribution of, let's say, gas or electricity—is a ...different story. [There's] just no connection whatsoever with the transition from communism to capitalism. Most of the Western European telecoms are in...public hands, most of European railways are in...public hands. And so on and so forth."

After this curious mixture of denial and confirmation concerning the slackening pace of privatization, Klaus went on to compare the policy situation in the Czech Republic to that of France's state-owned telecommunications sector. While a country ruled for most of the past two decades by socialists, boasting a top-heavy bureaucracy, high taxes, and heavily regulated labor markets, struck me as an odd model for what Klaus had once called "capitalism without adjectives," his example was even more provocative because it was out of date: France has privatized its telecommunications monopoly and begun to open its market—as have all the other major countries of Europe.

Bravely defending perhaps the last state-owned telecommunications monopoly in the Organization of Economic Cooperation and Development is in striking contrast to Klaus's emphatic rejection of the social-democratic "third way," and to the pledge

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Did Klaus, the radical capitalist, turn soft on socialist control? I spent an hour with him a few weeks before he finally resigned. It was a notably contentious interview, in which he began by vehemently denying that he had ever declared any "Czech Miracle" to begin with (while pointedly invoking the term only moments later in the conversation) and then zealously defended state ownership of at least 25 percent of the economy. The question I was most anxious to ask him concerned the pace of privatization. Here's how that exchange went:

Me: "The question that a lot of people are asking now, and not just critics but people who are quite sympathetic, is, What is the current status of the privatization program? The concern

he made in a 1990 interview with REASON ("No Third Way Out," June 1990) to attack the "giant, powerful state monopolies" with a "philosophy [that] can be summed up as *demonopolization*" (his emphasis). Perhaps, as the press has widely alleged, Klaus became fearful of the destabilizing political effects that widespread layoffs in the new firms would have, or perhaps he was seduced by the realpolitik advantages of go-slow privatization on a case-by-case basis, presided over by the governing party. Whatever Klaus's motivation in pulling back, the current situation ironically confirms his own early warnings about the disastrous consequences of slow privatization.

Transforming an entire society from socialism to capitalism

is complicated business. You can be right about almost everything and still foul up some very important stuff. The process is not quite an academic exercise; when you play with real money, hopes, and dreams, conflict and gamesmanship rear their heads. Political coalitions form, group dynamics kick in, a free press piles on—and egos blow up like mushroom clouds.

So here on planet Earth, we're forced to grade on a curve. And the thing that strikes one as most remarkable about the Czech Republic's situation, post-Klaus, is how favorably that country's transformation compares to that of virtually any other nation in similar straits. In a September 1997 draft of a forthcoming book comparing East European post-communist reform experiences, economists Patricia Dillon and Frank Wykoff of the Claremont Colleges write that "today's Czech Republic is usually considered the most successful of all the transition economies." It is not difficult to see why.

Percent of GDP for Various Sectors, 1990–95

Sector	1990	1991	1992	1993	1994	1995
Agriculture/forestry	8.0	6.3	5.9	6.6	5.8	5.2
Industry	43.2	46.9	44.6	37.0	34.8	34.8
Construction	9.0	6.8	4.3	5.2	5.9	6.2
Trade/services (other)	39.9	40.0	45.2	51.2	53.5	53.8

GDP % calculated on a cost-factor basis.

Source: Czech Statistical Office.

Market Forces at Work: Capital and human resources are shifting into the booming high-tech, trade, and service sectors.

Take a look at the numbers. Even with the current difficulties, the post-transition growth rate has been stable and positive: 0.6 percent in 1993, 2.7 percent in 1994, 5.9 percent in 1995, 4.1 percent in 1996, 1.8 percent in 1997, and 2.8 percent (predicted by the Czech Statistical Office) for 1998. Labor productivity has grown an impressive 10 percent in the past year, and real wages have been rising almost as fast (7.7 percent in 1995 and 8.5 percent in 1996). This has occurred in the context of moderate inflation, rising recently to 10 percent, and very low unemployment. Both are much below the levels found in Slovakia, Poland, Hungary, and Russia.

Moreover, the Czechs are clearly leading the liberalization race. The country ranks 12th in *The Wall Street Journal*'s "economic freedom" index (compared to 21st for Germany, 64th for Hungary, and 85th for Poland), while the World Bank's "Liberalization Index" gives the Czech Republic a score of 0.93—tied with Hungary and Estonia for the freest economy in the developing world (compared to 0.89 for Poland and 0.69 for Russia).

Given the barrage of publicity about the failure of Czech privatization to reorient the bulky, overstaffed state industries, I was surprised to learn that total industrial employment declined by *half a million workers* from 1990 to 1996 (from 1.7 million to 1.2 million). The bloated agricultural sector also has been slashed without massive unemployment: In 1990 it accounted for 8 percent of GDP; by 1995 it was down to 5.2 percent. Capital and human resources are streaming into the booming high-tech sectors and the previously starved service industries (see table).

World Bank studies show that, for all their shortcomings, the emerging Czech capital markets have tended to monitor corporate managers relatively effectively. A May 1997 World Bank report finds that, from 1992 to 1995, "Czech firms had the highest growth rates in labor and total factor productivity" among Eastern Bloc countries. The analysis even found that the much-maligned investment funds, including those owned by the banks, had performed OK. "The Czech model," the World Bank concludes, "offers useful lessons for other transition economies: the speed of privatization matters, and both more concentrated ownership and indirect ownership by banks leads to faster restructuring." In other words, Czech capital markets, compared to the relevant alternatives, work pretty well.

So the sky, while a bit darker these days, seems not to have fallen on the Czech Republic. True, growth has slowed, and real problems must be solved. But the economy has been transformed through the most aggressive reform program in the entire Eastern Bloc (save, perhaps, Estonia's), and further progress will no doubt accompany continued liberalization. Elections are likely to be held in June or November, and it is quite possible that Klaus's party, which now trails the Social Democrats by six to 10 percentage points in the polls, will become the loyal opposition. Perhaps more important, the communists have no party and no chance—a situation nearly unique in the region—and no serious electoral entity will attack Klaus's transforming achievements.

Except, perhaps, Klaus. When the prime minister announced pro-regulation policies in April 1997, *The Prague Post* reported, "Ironically, the concept of greater controls was criticized by the prime minister's allies while being heartily supported by his opponents." Klaus was finally forced from office in November 1997 by members of his own liberal coalition. One of them, Civic Democratic Alliance leader Jiri Skalicky, complained that Klaus's movement had to be saved from its leader: "I am afraid that Klaus...is trying to ruin all the good things he's done for this country." Purged of their contentious and confused messiah, perhaps the forces of liberalism can regroup. There's more of the Czech Miracle yet to be performed.

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Chemical Reaction

The EPA wants to reduce materials, not danger.

By Lynn Scarlett

Telephones, vitamin C, mammography film, wire insulation, kitchen sinks, aspirin, bridges, and white paper are among the essentials of modern life that share a common foundation: They either contain chemicals listed as toxic by the Environmental Protection Agency or require such chemicals in the manufacturing process. The EPA wants to reduce the use of those chemicals in the United States, and it thinks it has found a strategy that will work. It hopes that if it requires manufacturers to report publicly the amounts of these chemicals they use, companies will reduce chemical consumption to avoid negative publicity.

The EPA's focus on chemical-use reduction marks a fundamental shift in environmental policy. Under its proposed "materials accounting" policy, the agency is changing its emphasis from controlling the release of pollutants to reducing the consumption of certain materials as an end in itself—an end tied neither to reducing environmental risks nor to maintaining viable ecosystems.

No new law has authorized this shift. Rather, its origins lie in a 1986 bill, the Emergency Planning and Community Right-to-Know Act, that required certain companies to disclose information about the release into the air, water, or soil (and transfers off-site) of 336 chemicals, later increased to 650 chemicals. This so-called Toxics Release Inventory resulted in periodic reporting by companies of the listed chemicals on a volume basis.

Environmentalists have heralded TRI reporting as a triumph of "market" environmentalism, of directing economic incentives to green ends. The law required no specific reductions in chemical releases. But companies, loathe to report releases of high tonnages of the offending substances, quickly began reducing releases of TRI chemicals. A market response, say TRI's proponents.

"What gets measured gets attention," an EPA official quipped. Between 1988 and 1993, release of TRI-listed chemicals dropped some 43 percent.

These reductions in chemical releases did not necessarily correspond to reductions in risk; if risk reductions did result, it was by happenstance, not because the TRI reporting requirements were rigorously risk-based. Nonetheless, buoyed by these reductions, TRI champions pressed for broader reporting requirements. The 1990 Pollution Prevention Act redefined "releases" as TRI chemicals "entering any waste stream." The EPA decided that this language included wastes that were recycled, even on site. Also included were wastes treated or incinerated for energy recovery.

Through a subtle redefinition of "pollution prevention," the EPA stated that the goal of TRI should be to reduce the production and use of toxic chemicals, rather than to reduce waste and releases of toxins into the environment.

The EPA's definition made the connection between TRI information and environmental risk even more tenuous. By 1993, actual releases into air, soil, or water accounted for less than 9 percent of total reported chemicals. The rest of the TRI-reported "waste" was recycled, recovered for energy, or treated to become nontoxic.

Of the 240 million tons of TRI-listed chemicals produced in 1993, some 1.4 million tons were actually released into the environment. Yet the EPA's system required companies to report nearly 17 million tons of chemical "waste." The EPA's revised definition actually meant total TRI-reported waste increased between 1991 and 1993, leaving the public with the highly misleading impression that ever-escalating mountains of toxic chemicals were poisoning the environment.

For example, hexane, a petroleum-derived chemical, makes up around 31 percent of the total volume of waste listed in 1995 TRI reports. But over 98 percent of the reported waste is actually recycled on site back into production processes. The 1995 TRI-reported hexane "waste" was 33 times greater than actual hexane production, since hexane is often used and reused in a continuous cycle. According to the EPA's perverse logic, this triumph of chemical recycling is reported to the public under TRI regulations as industry "waste."

"Materials accounting" information lends itself to such semantic games. Through a subtle redefinition of "pollution prevention," the EPA stated that the goal of TRI should be to reduce the production and use of toxic chemicals, rather than to reduce waste and releases of toxins into the environment.

In an October 1995 report to President Clinton, the EPA proposed measuring the amount of chemicals used in production processes and the amount shipped out as product or embedded within products. Included were chemicals in finished products, even if the production process transformed the chemical into a nontoxic form. For example, producers of polyethylene, a nontoxic plastic, would have to report the amount of ethylene—a TRI-listed chemical—used to make plastic resin.

Clinton, endorsing the new reporting concept, announced that "materials accounting is no longer an option...it will be added to TRI." Apparently ignorant of the EPA's terminology gamesmanship, Clinton cautioned, "where there is room for concern...is that more waste was generated by industry in 1994 than in previous years."

Reducing the environmental footprint, or total impact on ecosystems, of industry is a laudable goal. Achieving greater efficiency in resource use is a part of that process and may often include the substitution of less toxic materials for toxic ones. Market price signals already drive firms to find ways to economize on the use of raw materials, including chemicals.

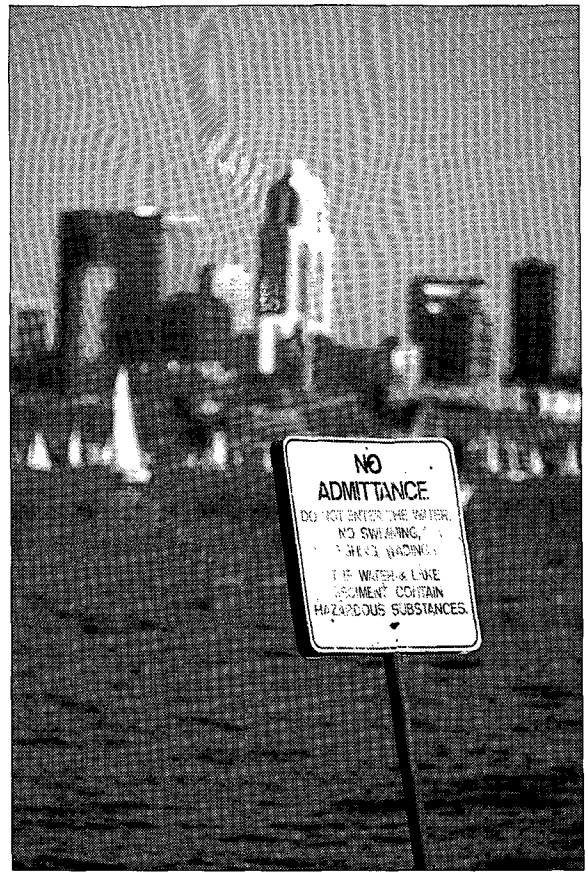
But the EPA's expanded TRI reporting assumes that reductions in the use of all TRI-listed chemicals are always possible and desirable, independent of any other considerations. The new materials-accounting concept also presumes that data collecting and reporting will automatically improve upon Adam Smith's invisible "green hand" that already pushes companies to conserve resources.

Clinton, in embracing the EPA's view, naively announced that materials accounting would motivate pollution prevention. After all, the TRI listing applied just to 650 "specific dangerous toxins," of the many thousands of available chemicals. The assumption behind his remark was that plenty of nontoxic alternatives must exist as substitutes, or that products made from these chemicals could be altogether eliminated.

Not so, says the Chemical Manufacturers Association. The EPA's TRI list includes six of the eight basic chemicals derived from petroleum. Companies would have to report the amount of chemicals used in thousands of products made from petrochemicals, many of which have no known substitutes.

The TRI list of 650 chemicals also includes 20 percent of the earth's basic elements. Aluminum, antimony, bromine, chlorine, cobalt, chromium, copper, fluorine, lead, zinc, phosphorous, manganese—these and other basic elements are listed as toxic chemicals. There are no substitutes for basic elements.

One half of the top 100 chemicals produced and used in the United States are on the EPA's list of toxic chemicals. Many of the remaining chemicals, while not on the list itself, require inputs of EPA-listed chemicals in their formulation.



Stop signs: The EPA knows that "what gets reported gets reduced." But do reductions generate health or environmental benefits? With the proposed materials-accounting regulations, the likely answer is no.

All these chemicals provide building blocks for over 70,000 different end products, many of which are nontoxic despite requiring some toxic chemicals in their manufacture. These products include many household comforts, basic infrastructure, and health care essentials.

Aluminum, for instance, is used in aircraft wings. Chlorine is used in computer chips, asbestos replacements, vitamin B-6, X-ray films, acetaminophen, saline solutions, packaging, and the treatment of drinking water. Benzene is used to make backpacks, tents, photocopier toner, bleached paper, niacin, and computer disks. Name a modern product and behind it will often lie a TRI-listed chemical.

If reductions in the use of these chemicals could improve human health and reduce environmental risk, the EPA's policy might make sense. But the link between use of these chemicals and environmental risk is virtually nonexistent.

As toxicologist George Gray of the Harvard Center for Risk Analysis told Congress, "Chemical use does not equal chemical risk....Simply knowing how many pounds are used provides no information regarding health and environmental risks." That's no information. None at all. Zero.

The initial TRI reports at least listed actual releases of chemicals into air, water, or soil where there was some potential for exposure. Yet even the original list of 336 chemicals did not result from any methodical risk assessment. Instead, these chemicals were taken from other lists of chemicals developed by legislators in two states, New Jersey and Maryland. And those lists derived mainly from surveys of companies in those two states that identified, primarily, the chemicals with the largest production volumes.

A risk-based reporting system would focus either on chemicals that pose very high risks or on those to which the public is likely to be exposed at potentially dangerous levels. TRI, introduced under the premise that people have a "right to know" the scope of chemical risks, misleads the public about these risks and exposures.

People should be informed about potential risks involuntarily imposed upon them. The "right to know," applied in this sense, simply reinforces historic common-law notions of justice. But expanding TRI to include materials accounting moves environmental policy into an entirely different arena in which "sustainability"—the current mantra—is equated with reduced consumption rather than lower environmental impact per unit of output. Risk becomes irrelevant.

As the EPA has noted, what gets reported may, indeed, get reduced. The more important question is whether that reduction generates any meaningful public benefit. With materials-accounting reporting, the likely answer is no.

Lynn Scarlett (lynns@reason.org) is executive director of the Reason Public Policy Institute and author of A New Environmentalism *(National Center for Policy Analysis, 1996).*

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Carolina Couch Controversy

Local busybodies target the front porch.

By John Shelton Reed

In the small-town American South porch sitting was once a nearly universal pastime. As a place for sipping tea or Co' Cola, smoking or dipping, telling stories, courting, and watching lightning bugs, the front porch was unsurpassed. Southern porches have been celebrated in song ("Swingin'" and "My Tennessee Mountain Home," to name just two country music examples) and story (Zora Neale Hurston: "It was the time for sitting on porches beside the road. It was the time to hear things and talk."). James Agee wrote about a porch in *A Death in the Family* (Samuel Barber set his words to music in "Knoxville: Summer of 1915"), and who can forget Faulkner's Greek chorus of neighborhood men, sitting on the Bundrens' porch in *As I Lay Dying*? A recent book on black Southern storytelling is fittingly titled *The Power of the Porch.*

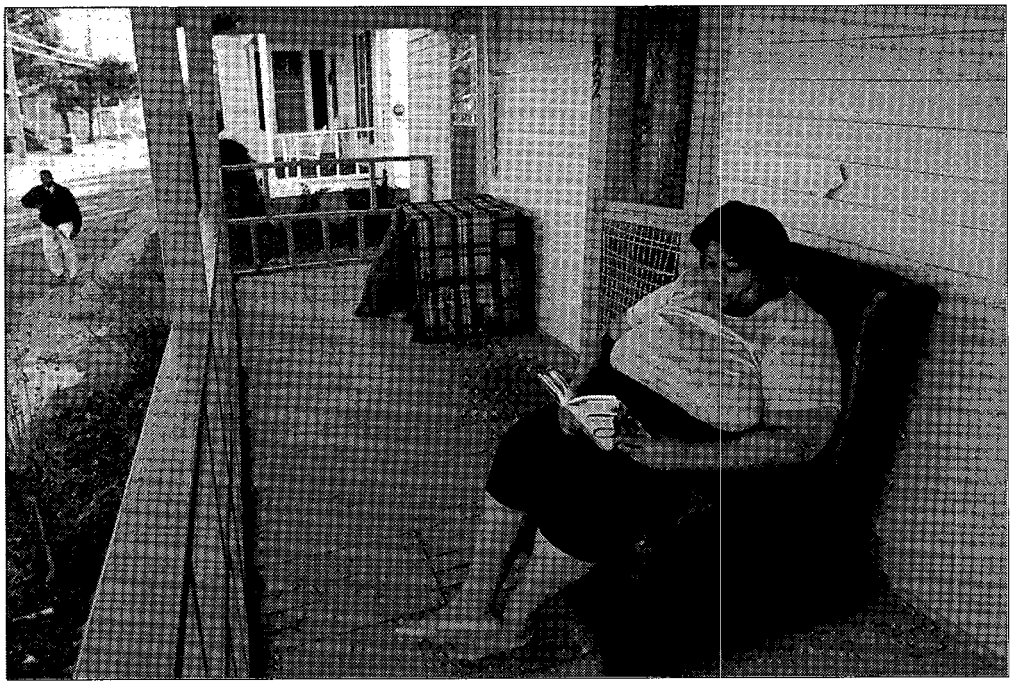
Sure, the actual activity of porch sitting (if *activity* is the word for it) has largely succumbed to the assaults of air conditioning, cable television, and migrants from places with cold evenings. Many new Southern homes substitute a solipsistic deck out back for the traditional front porch. But Southerners are still nostalgically attached to porches as icons of old-timey leisure and sociability, and they crop up in unlikely places. Durham, North Carolina's alternative newspaper, for instance, heavily into things like healing crystals, opens each issue with a section called "The Front Porch." One of the Charlotte airport's interminable corridors displays photographs of Charlotteans sitting on their porches. And new, planned, neotraditionalist developments like north Florida's Seaside have reintroduced porches in a hopeful attempt to build community. Yes, we take our porches seriously down here.

So when the Appearance Commitee of Wilson, North Carolina, a small town in the eastern part of the state, decided to do something about how the place looked, it was no surprise that they started with the town's front porches. It was no surprise either that when they proposed a ban on upholstered furniture they ran into some resistance from folks who like their porches just the way they are.

The committee came up with some lame excuses about eliminating breeding places for rats and fleas, but the real objection was that the stuff just looks so *trashy.* As committee member Sarah Rasino told *The Charlotte Observer,* "Upholstered furniture exposed to the elements becomes waterlogged, deteriorates, and the stuffing falls out. Homes that have upholstered surfaces on porches tend to have trash in the yard, too. It goes hand in hand."

There's a class angle to this, of course. Like much of the South's traditional culture, porch sitting survives in its least self-conscious form among poor and working-class folk, black and white. It isn't the country-club set, after all, who enjoy waving as the cars go by. Moreover, these are the same folks who often can't afford air conditioning or cable TV. The problem, as the Appearance Committee sees it, is that they often can't afford decent-looking porch furniture either—or at least that they see no reason why they shouldn't furnish their porches with beat-up old sofas or recliners that have outlived their usefulness in the living room.

To Wilson's embarrassment, the smart-ass metropolitan newspapers had a lot of fun with this story, and some of my academic colleagues played along. Emory University historian Dan Carter lamented in *The New York Times* what he saw as "the ultimate yuppiefication of the South," add-



ALAN S. WEINER / NYT PERMISSIONS

Wilson resident Elizabeth Best relaxes in a time-honored tradition. The town's Appearance Committee has proposed a ban on placing upholstered furniture outdoors.

ing tongue-in-cheek that "there's nothing more inviting than an old front seat from a 1957 Chevrolet sitting on a front porch." Charles Reagan Wilson of the University of Mississippi told *The Charlotte Observer* that the proposal was "an outrage," a violation of the Southern "idea of the outdoors as a livable space." He invoked Dolly Parton and the memory of Elvis Presley, and groused, "Next thing, they'll ban pink flamingos in front yards."

But for all the talk of ratty porch furniture as a regional tradition, what the Appearance Committee really threatens is a different Southern tradition altogether, one that W. J. Cash wrote about in *The Mind of the South* nearly 60 years ago: the region's "intense individualism." In the Old South, Cash argued, this trait was found not just in the Southern planter, "wholly content with his autonomy and jealously guardful that nothing should encroach upon it," but also among "the farmers and the crackers [who] were in their own way self-sufficient, too—as fiercely careful of their prerogatives of ownership, as jealous of their sway over their puny domains, as the grandest lord." Decades later, Cash wrote, Southerners still saw the world "as, in its last aspect, a simple solution, an aggregation of self-contained and self-sufficient monads, each of whom was ultimately and completely responsible for himself." And the "ruling element" in this tradition was "an intense distrust of, and, indeed, downright aversion to, any actual exercise of authority beyond the barest minimum essential to the existence of the social organism."

Although I sympathize with the appearance commissars' motives, something more important than appearance is at stake here. If a man can't choose his own damn *porch furniture*, what the hell can he choose? I say they can have my La-Z-Boy when they pry it from my cold dead fingers.

This down-home libertarianism is still with us, celebrated in dozens of country songs by singers like Hank Williams Jr., Charlie Daniels, Bobby Bare, Merle Haggard, and David Allan Coe. In 1976, journalist Roy Reed described it for readers of *The New York Times*. The South, he wrote, is "given [its] dominant tone by men—and women who acquiesce in this matter—who carry in their hearts or genes or livers or lights an ancient, God-credited belief that a man has a right to do as he pleases. A right to be let alone in whatever plain of triumph he has staked out and won for his own. A right to go to hell or climb to the stars or sit still and do nothing, just as he damn well pleases, without restraint from anybody else and most assuredly without interference from any government anywhere....It is no accident that the most determined holdouts against land-use legislation in the United States are country people from the South. They will take care of their own land, and let the next man take care of his. If the next man puts in a rendering plant or a junkyard, that is his business."

Reed argued that this is yet another Lost Cause, lost "about the time [a man] lost the irretrievable right to take a leak off his own front porch" (a porch activity I forgot to mention). But, he wrote, "they have not yet taken [Southerners'] right to curse and defy."

And that's about the size of it in Wilson. Last I heard, there was a whole lot of cursing and defying going on, but the appearance commissars seemed determined to stick to their guns. And that's a shame. Although I actually sympathize with their motives (I live in a neighborhood full of university students), something more important than appearances is at stake here. If a man can't choose his own damn *porch furniture*, what the hell *can* he choose?

I say they can have my La-Z-Boy when they pry it from my cold dead fingers. ◆

John Shelton Reed (john_reed@unc.edu) teaches sociology at the University of North Carolina. His book 1001 Things Everyone Should Know about the South *(written with Dale Volberg Reed) was recently issued in paperback by Doubleday.*

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Tax Time

How Congress spells *relief*

By Michael W. Lynch

On a dreary day early last November, some 350 Smith Barney clients crowded into a Virginia conference room to hear from experts just what the "Taxpayer Relief Act of 1997" will do for them. What they discovered—and what you will discover, too—is that most of the act's relief has been reserved for accountants and tax lawyers, who will earn plenty for poring over the details of the 300-plus-page bill. "If this is a relief, I would hate to see what they were going to do to me if they were going to make things hard," one certified public accountant told the Smith Barney crowd.

Rife with exceptions, exemptions, exceptions to exemptions, and myriad time and income-level thresholds, this law is a case study in why Washington politicians, even when trying to provide taxpayers with some relief, are incapable of doing so. On prominent display are two of Washington's central operating principles.

First, political capital is maximized when every dollar in Washington appears to be spent more than once. This principle is apparent in complicated provisions that sound soothing when reported on the nightly news—"Americans can now set aside tax-free money each year for their children's education"—but are so narrowly tailored and poorly designed that in practice they will do little good for anyone.

The second principle embodied in this act concerns political wealth: It is created by passing out benefits today and pushing off the costs into the future. It is the inverse of wealth creation in the private sector. It is exemplified by the practice of front-loading perceived benefits and back-loading real costs, something Republicans railed against while out of power but managed to come to terms with after settling into committee chairmanships. They've decided that Americans send their representatives to Washington to pass out candy, not to administer medicine.

Consider the much-touted expansion of Individual Retirement Accounts. Congress and the president want us to save. As a prod, they've now given us five IRAs: the traditional, deductible IRA; the non-deductible IRA; the rollover IRA; the Roth IRA; and the Education IRA. The last two are this year's additions.

The Roth IRA—named after William V. Roth (R-Del.), the Senate Finance Committee chairman who championed it—is a perfect example of passing the bill to future Congresses. With traditional tax-deferred IRAs, money goes in tax-free, accumulates interest tax-free, but is then taxed at time of withdrawal. For the Roth IRA, the deposits have already been taxed, but both the earnings and withdrawals are tax free. Congress is encouraging people to convert (or roll over) their traditional IRA to a Roth IRA by allowing individuals to spread the federal taxes owed over four years. Why? For the simple reason that it would pocket the taxes paid on the current balances, while making up the forgone income is a problem for future Congresses.

"If [the new tax bill] is a relief, I would hate to see what they were going to do to me if they were going to make things hard," one CPA told 350 Smith Barney clients at a tax-planning seminar.

Thus, not only does the Roth IRA not cost this Congress anything, but—if people take the rollover bait—it gives legislators more money to spend. Since burgeoning revenues and shrinking deficits are already leading to bipartisan talk of increased government spending, that's actually dangerous.

Then there are the education incentives, which come in highly qualified and mutually exclusive packages: the Hope Scholarship Tax Credit; the Lifetime Learning Tax Credit; and the Education IRA.

The Hope Scholarship Tax Credit is a good deal for couples who earn under $80,000 a year. (All income thresholds refer to gross income.) Spend $2,000 on your child's college education, and you will receive a $1,500 credit on your taxes. This is good for the first two years of college (unless your child is convicted of a drug felony) and is available in 1998.

After June 1998, the Lifetime Learning Tax Credit kicks in, letting taxpayers claim a credit of up to $1,000 for the first $5,000 they pay out of pocket for higher education, including graduate school. Then there's the Education IRA, a nifty vehicle which allows any individual with annual earnings of no more than $95,000 to contribute up to $500 each year to an IRA dedicated to any child's college education. The contribution is taxed, but interest accrual and expenditures are tax-free.

These incentives may seem generous, but given Washington's imperatives, the whole is literally less than the sum of its parts. For starters, the Education IRA's $500-per-year cap is low, and the money can't be combined with the other two tax credits. If you plan to claim the Hope Credit or the Lifetime Learning Credit, any expenditure from the Education IRA will be taxed—which means Washington gets a cut when the money goes in and another when it comes out. In addition, the income cap is on contributors, rather than the child's parents, which prohibits generous individuals who earn more than $95,000 a year from setting up Education IRAs for needy children.

None of these restrictions makes sense if the goal is to increase educational opportunity. They make perfect sense, however, if the goal is to *appear* to expand opportunity while giving up as little as possible.

Investors will face the law's absurdities when filing their 1997 taxes. We know that capital gains taxes have been reduced, but

there is disagreement, even among experts, as to how much.

"They [Washington's politicians] say the rates have come down to 20 percent," the CPA explained to Smith Barney's clients. "This is really a misconception... there are really five rates."

Not according to Ric Edelman, author of the best-selling *The Truth About Money* and founder of the Edelman Financial Center in Fairfax, Virginia. "Thanks to the new law, there now are not one, not two, but *nine* capital gains tax rates, and to make matters worse, there are lots of conditions, exceptions and exclusions," writes Edelman in a special edition of his newsletter. (For a third opinion, *The Ernst & Young Tax Saver's Guide 1998* claims to have found eight rates.)

Let's take it from the top for an applied lesson in what denizens of Washington mean when they speak of relief: Instead of simply cutting the rate on long-term capital gains (assets held more than a year), Congress created an entire new class of investments—assets held 12 to 18 months. These are taxed at the old, pre-"reform" rates of either 15 or 28 percent for long-term gains (the actual rate depended on income level). For long-term gains, now identified as profits from the sale of assets held more than a year-and-a-half, the top rate is now 20 percent.

So instead of the previous two holding periods (less than a year and more than a year), Congress has given us three. This certainly isn't simplification; but neither is it inscrutable.

But there's more. If you sold an asset between May 7, 1997, and July 28, 1997, a period *before* the law was passed, the government will take only a 20 percent bite, even if it wasn't held for 18 months. Why? "The only thing I can figure," said the CPA at Smith Barney's seminar, is that "when they were doing this [a congressman] had something he wanted to dump quick."

To get us focused on the future, Congress created two more rates—18 percent and 8 percent—for assets purchased after 2001 and held for five years. For the 8 percent rate, individuals in the 15 percent bracket don't have to wait so long. They can cash in on any asset they've owned for five years, so long as they sell it after 2001.

So much for simplified, non-distortionary capital gains tax rates. Why not lower the two existing rates, or scrap them altogether? That would have cost the current Congress and sitting president revenues.

The other major provisions effective this tax year are the changes in taxes on profits from home sales. "The best way to begin understanding the new law is to forget everything you knew about the old law," counsels Edelman. For homes sold after May 6, 1997, the first $250,000 per person ($500,000 for a couple) in profits is completely tax free. This exclusion is good every two years, provided the property was a primary residence of the seller for at least two of the prior five years.

This benefit, too, is far less generous than it appears—which is why it is in the package. According to Edelman, very few individuals, given the soft real estate market of recent years, will soon sell for such high gains, but many will sell for losses, which still aren't deductible.

"Congress gives us a deal we really can't use but that doesn't cost it anything while denying us a deal we could have used but that would have cost it a fortune," Edelman writes. The key is to appear to be on the taxpayers' side.

The one area where the law is straightforward is in the child tax credit. Starting in 1998, parents with incomes under $110,000 ($75,000 for singles) will receive a $400 tax credit per child, as part of America's new family policy. In 1999, the credit rises to $500.

But even this promise may not materialize for many. Due to the alternative minimum tax—a provision designed to force fat cats to pay their share of taxes—some individuals with incomes as low as $60,000 will receive no relief.

As you fill out your tax forms this year (or, more likely, as you write a check to your tax preparer), remember what this Congress did for you—and why. It's not that our elected officials necessarily set out to produce a tax absurdity. It is that, in Washington, the power to "relieve," like the power to tax in the first place, is understood in self-serving terms.

Michael W. Lynch (mwlynch@concentric.net) is REASON*'s Washington editor.*

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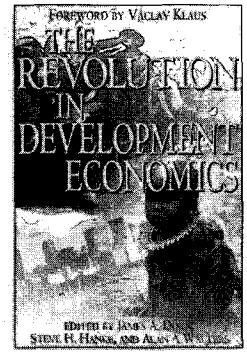
—James M. Buchanan, Nobel laureate in economics



The collapse of communism and the statist model of development planning has led to a revolution in development economic theory. There is a new focus on, and appreciation for, the important roles that market institutions and cultural factors play in shaping economic performance, as well as the importance of private property, a concept first promoted by a pioneer in this field, Lord Peter Bauer. Other contributors to this book include Karl Brunner, Deepak Lal, Julian Simon, Alan Rufus Waters, Paul Craig Roberts, Sir Alan A. Walters, and Alvin Rabushka.

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Masters of Manipulation

The muzzling of a chiropractor shows the First Amendment is no match for the Federal Trade Commission.

By Brian Doherty

One of the poet Ezra Pound's favorite Confucian sayings holds that the first act of good government is to "call things by their right names." Such precision is important not only to poets but to lawyers, regulators, and the citizens regulators regulate—all of us, in other words. Unfortunately, it's sometimes hard to know what the proper name for something is.

Ask Tedd Koren, a chiropractor from Pennsylvania. For the past decade, Koren has written, published, and sold brochures describing what he believes about the wonders of his chosen profession. He sells the pamphlets mostly to other chiropractors, who usually leave them in waiting rooms to be picked up by patients.

Koren calls the brochures "patient education literature." The Federal Trade Commission calls them advertising. And that disagreement is causing Koren a lot of grief. The FTC says some of the claims in the pamphlets are misleading, and if Koren doesn't allow the commission to set itself up as his ad hoc editorial and scientific advisory board, he could be in big trouble.

Definitions often come from positions of power. When the FTC says your speech is advertising, unless you are very wealthy and very brave, you must agree and accept the consequences that follow from that definition. For Koren, one of those consequences is that the claims in his brochures have to meet the FTC's protean standard of "competent and reliable scientific evidence," which usually includes double-blind studies. If the FTC decides that Koren's evidence is not up to snuff, it can impose ruinous fines: up to $10,000 per violation, with each copy of a pamphlet counted as a violation.

Most people think of chiropractic as, at best, something good for back pains and, at worst, pure quackery. The profession has had a long ride to public acceptance since its beginnings in 1895, when Daniel D. Palmer allegedly cured a man's deafness by adjusting a "subluxation" in his back. Subluxations, which most M.D.s say are figments of the chiropractic imagination, are misalignments in the vertebrae. The chiropractor, mostly using only his hands, realigns them.

There are about 55,000 licensed chiropractors in the United States, and they saw 21 million patients in 1996. Like any profession, chiropractic has its share of disgruntled clients: The major chiropractic malpractice insurance company made payments in 1,402 cases from 1991 to 1995, with back disk damage from adjustments being the most common complaint. But chiropractors clearly have plenty of satisfied customers.

This leads to another definitional fight: the difference between a satisfied customer and a cured patient. As Koren describes it, chiropractic rejects standard medical science's mechanistic view of the body, stressing instead a holistic "vitalism" that has much in common with other nonmedical healing arts, such as acupuncture and homeopathy.

Those two different views of healing don't get along well together. Though chiropractic is now a licensed profession in all 50 states, the American Medical Association condemned it as quackery for decades. In 1966 the AMA declared, "It is the position of the medical profession that chiropractic is an unscientific cult whose practitioners...constitute a threat to health care in the United States."

The AMA relaxed its assault on the profession after it was told to desist in 1987 as the result of an antitrust lawsuit filed a decade before by four chiropractors. U.S. District Judge Susan Getzendanner said the AMA had engaged in "lawlessness" and "systematic, long-term wrongdoing" in its campaign against chiropractic. She ordered the AMA to publish her decision in *The Journal of the American Medical Association.* The AMA settled the case on terms that have not been officially made public, although one source involved in the case claims the AMA forked over "millions" to chiropractic colleges.

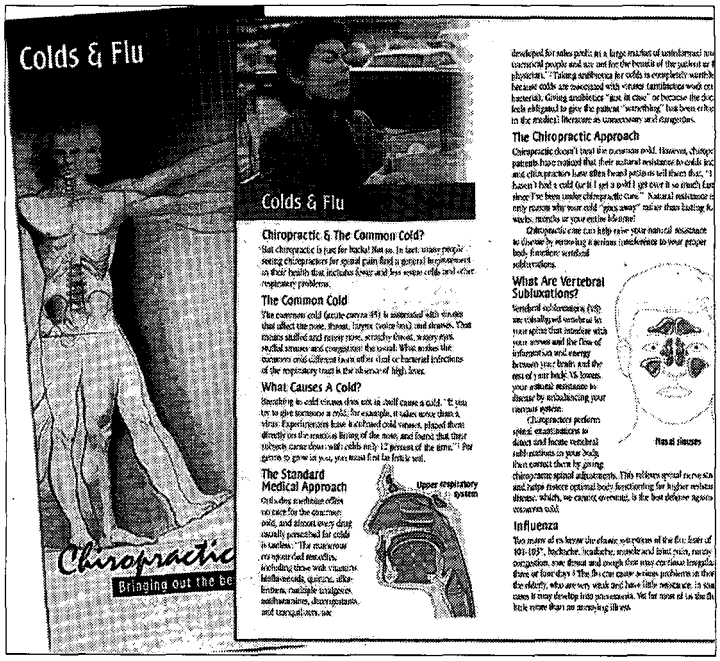
The government, then, has already weighed in on one side of the debate between chiropractic vs. standard medicine by dictating what the AMA can and cannot say about chiropractic—in the name of antitrust. Now with the FTC's investigation of Koren, it is weighing in on the other side, in the name of consumer protection. Leaving both sides free to fight it out in the realm of public and scientific debate seems never to be an option.

Koren thinks chiropractic is about more than back pain. This issue splits the profession, with some chiropractors sticking close to the "chiropractic is good for relief of lower back pain" line and some entertaining the notion that it can do more. To a vitalist, spinal manipulation can have many effects on the body, since all nerves run into the spine. Koren is evangelical about his views, and to people with a nose for quackery his brochures would likely fail a smell test. He believes the chiropractic system of adjusting subluxations can have positive effects on things ranging from asthma to premenstrual syndrome to digestion to the flu—all subjects of his pamphlets.

Koren stresses that he is not in the business of curing disease, and his brochures often make that point. He says it's wrong to make double-blind clinical trials the ultimate test, whether for chiropractic or for standard medicine. "All clinical trials can give you is averages," he says. Every human being is different and can be expected to react differently to treatments. But when Koren finds articles in scientific journals that suggest spinal manipulations can help relieve ailments other than back pain, he wants to be able to say so.

The FTC says no. It insists, for example, that Koren must not say there is "proof"

for certain claims, even if Koren never used that word. The FTC says, though, that by citing specific journal articles Koren was *implying* something misleading, even if he didn't directly say it. One pamphlet simply cited a study published in *The Journal of Chiropractic Research* that claimed to find "increased resistance to the common childhood diseases" in a group of 63 unvaccinated children treated by chiropractors. But according to the FTC, the pamphlet said "a study...proves that chiropractic administered to children increases their resistance to common childhood diseases."



One of Tedd Koren's brochures. If the FTC decides Koren says things lacking "competent and reliable scientific evidence," it can impose ruinous fines: up to $10,000 per violation, with each copy of a pamphlet counted as a violation.

Koren revised and reprinted many of his pamphlets in response to a suggested FTC consent order, presented to him by staff attorney Sidney Steinitz in May 1997. Then in September the full commission came back and said it wanted a new order. One of its provisions would have required that Koren send every chiropractor who had ever bought one of his pamphlets a copy of the consent order and a letter saying, "The FTC has advised that if you disseminate advertising or promotional materials containing [false claims], you could be subject to an enforcement action."

"That would be like sending a letter saying I'm out of business," Koren says. His lawyer managed to get the FTC to drop that element of the proposed order. But if Koren agrees to the current order, for the next 20 years the FTC could decide at any time to fine him because, in its view, his pamphlets *imply* something lacking "competent and reliable scientific evidence."

In seeking to censor Koren, the FTC is asserting that his pamphlets amount to "commercial speech." The Supreme Court has repeatedly said that such speech—defined in one case as communication that does "no more than propose a commercial transaction"—is not fully protected by the First Amendment. But as federal appeals court judge Alex Kozinski and attorney Stuart Banner pointed out in a 1990 *Virginia Law Review* article, the whole notion that "commercial speech" can be clearly distinguished from other kinds of speech was created out of whole cloth in the 1942 case *Valentine v. Chrestensen.* Kozinski and Banner argue convincingly that the standard distinctions between "pure" and "commercial" speech—profit motive, objectivity, durability—don't hold up to close analysis. They warn that the commercial speech doctrine "gives government a powerful weapon to suppress speech by classifying it as merely commercial."

Koren's pamphlets, which clearly do more than "propose a commercial transaction," illustrate that point. Dr. William Jarvis, president of the National Council Against Health Fraud and an enemy of chiropractic for anything but back pain, acknowledges that conflicts between chiropractic and a standard medical/regulatory mindset hinge on differences that are "highly philosophical, metaphysical." Chiropractors have a different view of health, one that presumably appeals to their clients (or at least to those who are open to the possibility that spinal manipulation is good for more than back pain). Koren's pamphlets, even if they don't rigorously prove their case, are part of a scientific debate over the nature of healing. Under commercial speech doctrine, is anything a doctor says that can be linked to the prospect of buying a service from him thus open to lesser constitutional protection?

Thus, a strong case could be made that Koren's literature is *not* commercial speech. Even if the FTC's judgment on that point withstood a legal challenge, the commission's censorship might still be overturned, given the Supreme Court's recent tendency to closely scrutinize restrictions on commercial speech. But we will probably never find out. Koren can't afford the enormous cost of grappling with the FTC.

When a federal regulatory agency presents you with a consent order, no matter how unhappy you might be with the proposed settlement, the only way to ensure your business can live is to give in. If you choose to fight, you go before an administrative law judge, and if you are unhappy with his decision your first appeal goes to the agency itself. Your court battle could drag on for years and would likely cost hundreds of thousands of dollars. Offering a consent order generally is a quick and easy way for the government to get what it wants. Then, the legal issue is no longer whether you broke the law but whether you violated the consent order. Microsoft has recently learned that lesson.

Washington lawyer Jonathan Emord is engaged in a legal battle with the Food and Drug Administration over an issue similar to the one raised by Koren's case: whether manufacturers of nutritional supplements can use their labels to cite scientific articles indicating a product's potential for reducing the risk of disease. Because the FTC's reach over commerce is much broader than the FDA's, Emord considers it a more formidable opponent. "The FDA is in some ways a paper tiger," he says, "but the FTC is a dragon with big teeth and a huge intestinal tract. It can eat all day and night. And it does."

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Family Planning

Social engineering tempts the right.

By Walter Olson

For years sentiment has been building on the American right for an official "pro-family" policy. Such a policy would deploy some purposeful mix of social spending, tax incentives, family law reform, and miscellaneous regulation to encourage citizens, or at least parents of underage children, to take part in the traditionally structured family. At a minimum, on this view, government should try to ensure that children are born to married couples likely to stick together and look out for the child's welfare. In more ambitious versions, the state would also encourage one parent, normally the mother, to stay home to care for children not yet of school age rather than resume paid employment.

These ideas have been knocking around for some time and now have picked up one of their most distinguished exponents yet. Delivering the American Enterprise Institute's annual Boyer Lecture this December, UCLA social scientist James Q. Wilson laid out a five-point program of new government efforts aimed at "rebuilding the family." Columnist George Will promptly whooped up Wilson's proposals, especially his favorable comments about a "GI Bill" for mothers, a new federal program that would guarantee a large sum toward college expenses or other work training for moms who delay re-entering the labor force until their children are in school.

The imprimatur of a respected thinker like Wilson is likely to ensure that the GI-Bill-for-moms idea will remain in circulation for some time. Moreover, given the current state of conservative thinking, we can expect to begin hearing numerous other concrete proposals for new affirmative government initiatives aimed at reshaping family behavior in a "good" direction—social engineering of the right, you might call it. So it behooves libertarians to give this one a close look.

Wilson's lecture begins with a vivid account of the ills of the underclass, a group "armed to the teeth, excited by drugs, preoccupied with respect, and indifferent to the future." He traces these ills directly to the continuing illegitimacy boom, which of course has also been felt in higher social strata. In underclass culture, says Wilson, "a child is raised by an unwed girl, lives in a neighborhood filled with many sexual men but few committed fathers, and finds gang life to be necessary for self-protection and valuable for self-advancement."

Social science has now firmly—if tardily—backed up the common sense proposition that children raised by single mothers are more likely to get into trouble than those in intact families, even controlling for the effects of lower income. Wilson states that underclass culture is "growing more rapidly" than middle-class culture, though he does not explain how this squares with reports of plunging crime rates and fast-shrinking welfare rolls. Instead, he proceeds to propound a five-point program "to enhance family life and thereby reduce the size of the underclass."

Some of the five points are either not especially new or not hugely controversial. Wilson thinks adoption should be made easier for children languishing in foster care; no argument here. When the parents of pregnant teens cannot give them responsible supervision, he says, we should consider conditioning welfare benefits for them on their willingness to enter supervised group residences akin to the old Florence Crittenden Homes, which would enforce rules such as a ban on alcohol and drugs and restrict boyfriend visits to approved hours.

Wilson has also not lost hope in "early, intensive intervention" in the lives of disadvantaged youngsters, "much more intensive than what typically occurs in Project Head Start," supplementing ultra-high-quality day care with "parent training and home visitations" by social workers. He concedes that we don't know whether past small-scale successes of such programs could be replicated on a large scale today; as Charles Murray warns, the lack of a formula for such replication has been the wreck of many an ambitious social program.

Then Wilson suddenly arrives at the GI-Bill-for-mothers scheme, which, like the elephant in the elephant-and-rabbit stew, tends to stand out by sheer bulk from its commingled ingredients. "People—chiefly mothers—would be paid a public subsidy for discharging a vital social function," Wilson says. "Investing in early childhood is the most important investment any society can make."

Under the scheme, originally set forth in a 1993 *Public Interest* article by Richard and T. Grandon Gill, mothers who agree to forgo paid work until their children are of school age would receive substantial government subsidies in the form of educational credits which could be used later for college tuition, graduate education, or technical training. ("A Parental Bill of Rights," the article calls it, disproving the notion that libertarians are uniquely given to rights talk.)

The newly minted "rights" would come with plenty of strings attached. Not only would mothers not qualify for the benefit if they went to work while their children were small, but they would not be allowed to use the credits at later times if any subsequent children of theirs were still below school age. However, bearing a second child would probably increase the educational credits that a woman "earned" for later use.

What, one wonders, is this idea doing on a list of reforms intended to "reduce the size of the underclass"? To begin with, it would apparently be a universal entitlement, one that in fact might be used rather more by middle- and upper-class women than by their less well-off sisters, who are often not in a position to forgo work at first for several years while their children

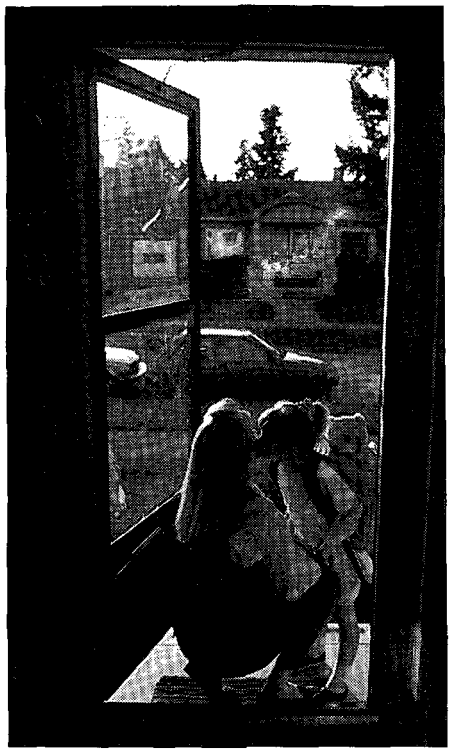
are small and then for another four or more while they attain a college degree.

At the same time, there's no hint in either the Gills' original proposal or Wilson's restatement of it that the program's benefits would *not* be made available to unwed or improvident moms. In fact the proposal would establish a powerful new incentive for early childbearing in or out of wedlock, which also correlates with later trouble for kids.

But it turns out that Wilson perceives in American society a second family crisis which may or may not have much to do with the illegitimacy or underclass crisis. This second crisis is the failure-of-mothers-to-stay-home crisis: In Wilson's view, too many women re-enter the work force and place their preschool children under others' care. Conservative journals for some time have inveighed against this practice as tantamount to child abuse.

The emergent line is that nonmaternal care for any longer than brief spells in any form, whether by relatives or friends, nannies or au pairs, church preschools or commercial chains, is just plain bad for kids, period. At times in his speech Wilson sounds as if the debate is over—which it isn't—and the conservatives have won: "Choices must be made between family and work. The first must take priority over the second." At other points he appears to concede that it is hardly a slam dunk for the "only maternal care will do" side.

But let us assume the antis prevail and that future observers come to see today's child care providers, whether for-hire or blood-related, in much the same light as readers of Grimm see the witch in "Hansel and Gretel." Does the rest of the scheme follow? If a consensus of American mothers someday comes to accept the idea of the universal badness of entrusted care, will they still have to be bribed to do the job properly themselves? (Wilson acknowledges the irony of "committing money to the task of inducing actions that were once the products of spontaneous arrangements.") And of all the possible schemes for bribing mothers to look after their own children, the Gill plan is particularly notable for its "horizontal inequities"—unfairly disparate treatment of similarly worthy parties—as well as for the range and variety of the perverse incentives



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Honey, I'm here for you because they pay me: James Q. Wilson and other conservatives now urge the government to subsidize stay-at-home mothers.

it would create and unintended consequences it would engender.

Consider the front row in the Identity Studies 101 class at Pricey U. There sits 25-year-old Alice, whose tuition is being paid by the taxpayers because she had the foresight to give birth when she was 18. Next to her are Beth, whose parents are writing checks to Pricey at great sacrifice because their daughter insisted on attending college first and embarking on motherhood later (if at all), and Carl, who was never in a biological position to make much of a choice one way or the other. Not in the classroom at all, but working behind a counter in town, are Dora, who has no intention of going to college ever, and Esther, who is in a special plight of her own. She always planned to get a degree but thought she'd be clever and get the government to pay for it, the way lots of girls did, so she just hung out after graduating high school, figuring that before long she was bound to be married with a kid. But now she's 28, the right guy hasn't come along, and she's thinking of getting pregnant on purpose rather than wait any longer. Beth and Carl, their parents, and Dora are all destined to work harder or longer at their jobs so that Alice and possibly Esther can attend for free. Meanwhile, social life at Pricey U. has fizzled because half the women are eight, or 10, or 15 years older than nearly all the men.

The libertarian policy on fixing the family is far less convoluted: Get the government out of the way and let families fix themselves. It's true that the courts should enforce private commitments duly entered into, which may require some rewriting of current family law. But otherwise it's mostly a matter of repeal, lighten up, undistort: If we're so uneasy about the effects of day care on kids, why on earth do we keep having the IRS encourage it artificially through the child-care tax credit?

The key step in arresting the rise in illegitimacy, plainly, is that of ceasing to subsidize it. According to a report in *The Wall Street Journal*, the state of Vermont "has seen the nation's sharpest drop in teen pregnancies," 25 percent compared with a nationwide 12 percent, following reforms in which the state government stripped away many of the welfare and Medicaid goodies obtainable by becoming *enceinte*. Until just lately, "if a girl got pregnant, welfare set her up in an apartment," said one teacher, adding that many teens saw pregnancy as a way "to get out on your own." "People got pregnant on purpose to go on welfare," agreed another official. "It was a culture change," said Gov. Howard Dean, a Democrat, of the newly favorable indicators. "The message was getting through immediately that this was not the way of life anymore."

The case against conservative social engineering is, in the end, the case for trusting actual families. Remove the malincentives and stop shoveling money at costly misbehavior, and in a free, affluent, and enlightened nation, family structure can begin to regulate itself—unsurprisingly, since parents now as always are best situated to figure out what's best for their kids. In their present gloomy mood, it's the social conservatives who've given up on this most basic of human institutions as too weak to recover without artificial methods.

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Out of the Mouths of Babes

By Nicholas Schulz

Fair Play: What Your Child Can Teach You About Economics, Values, and the Meaning of Life, by Steven Landsburg, New York: The Free Press, 230 pages, $24.00

H.L. Mencken described Henry Hazlitt as "one of the few economists in human history who could really write." Were the sage of Baltimore alive today, undoubtedly he would say the same of a professor from the University of Rochester, Steven Landsburg.

This University of Chicago–educated mathematician and economist is a serious academic. But his true gifts lie elsewhere: He makes complicated economic and public policy issues accessible to a general audience and, like Hazlitt before him, forces the reader to challenge previously unexamined assumptions that muddle public debate.

Landsburg's second book-length presentation of these gifts is a charming little volume, *Fair Play: What Your Child Can Teach You About Economics, Values, and the Meaning of Life.* The book's breezy tone and light-hearted title belie the thoughtfulness and scholarly sophistication that undergird almost every assertion that Landsburg makes, no matter how outrageous. The book is part primer on economics and public policy, part tutorial on the value of skeptical inquiry.

For Landsburg, our reluctance to question certain settled "truths" or conventions, and the hostility with which such questioning is often met, make progress difficult. Take taxes. Deep down inside, Landsburg argues, no one really believes in the virtues of a redistributive income tax. How does he know this? "I know this because I have a daughter, and I take my daughter to the playground, and I listen to what other parents tell their children. In my considerable experience, I have never, ever, heard a parent say to a child that it's okay to forcibly take toys away from other children who have more toys than you do. Nor have I ever heard a parent tell a child that if one kid has more than the others, then it's okay for those others to form a 'government' and *vote* to take those toys away."

The merits of redistributive taxation have nevertheless become deeply ingrained in our culture, and to question them is considered insane or evil. Lamar Alexander, in his bid for the Republican presidential nomination, called flat-tax proposals "nutty." In the recent Virginia gubernatorial campaign, President Clinton weighed in on a controversial proposal to eliminate a wealth tax on car ownership, calling supporters of the idea "selfish."

Just how far have our cultural biases shifted that the scold-in-chief can seriously levy such a charge? The tax historian Charles Adams notes in a new book about tax revolts that Brooks Adams, one of the last patriarchs of the legendary Adams clan of Massachusetts, wrote in *The Atlantic* a little over 100 years ago that "all taxation is an evil" and that "heavy taxes, indiscriminately levied...are one of the greatest curses that can afflict a people." This bias has been turned on its head: Taxes are no longer evil; the people who oppose them are.

Fair Play attempts to foster a hearty "habit of irreverence" to fight the intellectual complacency that stems from our deep-rooted cultural biases. Consider this delightful story:

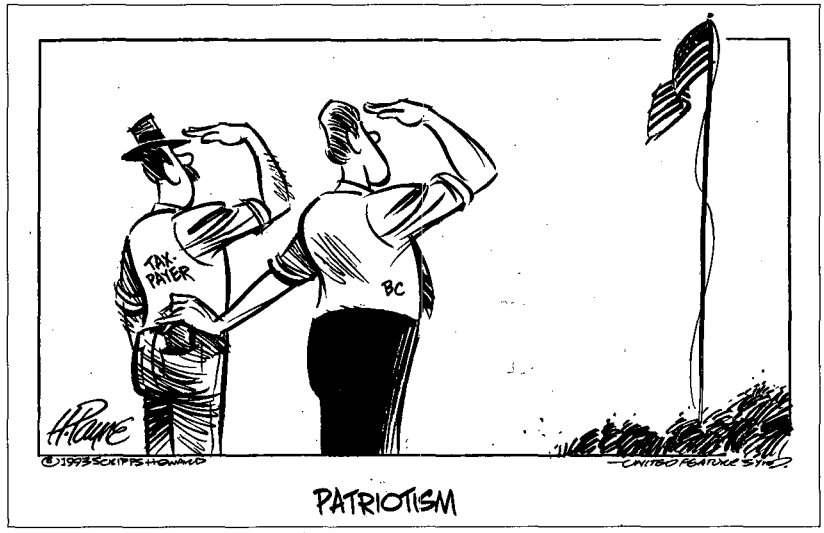
"When [my daughter] Cayley started attending Sunday School at our local Reform synagogue, I noticed that one of the other classes had been assigned to write an essay beginning 'To be more like God, I will [blank].' The best essays had been posted on a public bulletin board, and they all had beginnings like 'To be more like God, I will recycle' or 'To be more like God, I will be kind to animals.'

"Hoping that Cayley's class would receive the same assignment, I talked to her about what she might write. I suggested 'To be more like God, I will slay the firstborn of my enemies.' She didn't like that, so we edited it for a while and finally came up with 'To be more like God, I will attempt to achieve dominion over the entire universe.' "

He has scant patience for avatars of correctness who structure the debate to favor political agendas with little basis in fact or theory: Recycling is "godlike"; failing to recycle is, presumably, satanic.

How, then, to correct these biases? First, recognize them. Then expose them.

And expose them Landsburg does. He demonstrates the true nature of taxation, for example, with a tongue-in-cheek policy proposal: "You'll calculate your taxes just as you do today, but instead of



HENRY PAYNE

writing a check to the IRS, you'll write a check to Toys R Us, in exchange for the equivalent value in toys. You'll bring the toys home and give them to your children; then after one week an IRS agent will arrive at your door, confiscate the toys, and return them for cash. I can think of no better way to educate children about what taxes are."

All this talk about children and toys and playgrounds leaves Landsburg open to the criticism that serious issues and ideas cannot be explored with trivial anecdotes. On the contrary, he says he has found that explaining issues this way helps "strip away the surrounding verbiage and display the underlying assumptions with devastating clarity."

Make no mistake, *Fair Play* is a serious book. Landsburg tackles the seminal intellectual achievement of modern American liberalism, John Rawls's *Theory of Justice.* This text has driven contemporary political theory since the early 1970s. Thanks to Rawls, we were led to understand the principle of "justice as fairness." A just society could be constructed only behind a "veil of ignorance," where characteristics and circumstances which are "arbitrary from a moral point of view" are prohibited from influencing social outcomes.

Landsburg performs an important bit of intellectual jujitsu on Rawls. He embraces the philosophical framework Rawls established to ensure a just society. Then, donning his economist's cap, he constructs a model to demonstrate just how unappetizing Rawlsian liberalism would prove in practice.

Among other things, it would surely mean a tax on the arbitrary traits which are reliable indicators of earning power. Since whites on average earn more than blacks, there would be a tax on whiteness. Since men on average earn more than women, and taller people more than shorter, there would be maleness and height levies as well. Rawls's theory might also require subsidies. There is a strong correlation between a person's finding a suitable mate in life and his or her overall happiness. Since physical attractiveness expands the pool of potential mates, a just society would provide tax breaks for good-looking people to mate with ugly ones. These examples suggest that Rawls's neat and tidy scheme is not so neat and tidy after all.

For all its strengths, *Fair Play* is not without flaws. Many of the book's instructive examples and analogies revolve around Landsburg's daughter. While his obvious devotion to her is touching, it can get a bit tiresome, kind of like being shown too many baby pictures.

Landsburg wears his anti-authoritarianism like a badge of honor, but his stridency is off-putting at times. The statement "authority is always and everywhere the enemy of freedom" is either an empty tautology or just plain absurd. Landsburg fails to draw an important distinction between public and private authority, thereby neglecting the role of institutions that are critical for a healthy society, such as churches, businesses, and families. He also fails to note the value of a limited government and the rule of law in the preservation of freedom. And while Landsburg is right that the "blind exaltation of government" is dangerous, he gives the reader pause when he says he is inclined to teach the young "that all laws are bad." Likewise when he calls for an attorney general who "believes that bad laws are bad and should be ignored"—a sentiment worthy of Bill Lann Lee.

All in all, *Fair Play* is a valuable and eminently readable book. Landsburg shakes the reader out of a comfortable complacency and reminds us of the importance and power of culture. A libertarian friend once remarked, "The problem with conservatives is that all they want to do is fight the culture war." To a certain extent he was correct. But the scope of the culture war is not nearly as narrow as either libertarians or conservatives believe. It is a fight over the largely unexamined assumptions that dominate discourse today—not just about marriage, drugs, abortion, and homosexuality but about trade, regulation, affirmative action, judicial activism, immigration, taxes, torts, the environment, and a host of other issues. Enough, it would seem, for a common project between libertarians and conservatives. *Fair Play* is an important reminder of that.

Steven Landsburg has scant patience for avatars of correctness who structure the debate to favor political agendas with little basis in fact or theory: Recycling is "godlike"; failing to recycle is, presumably, satanic.

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Green Beyond His Years

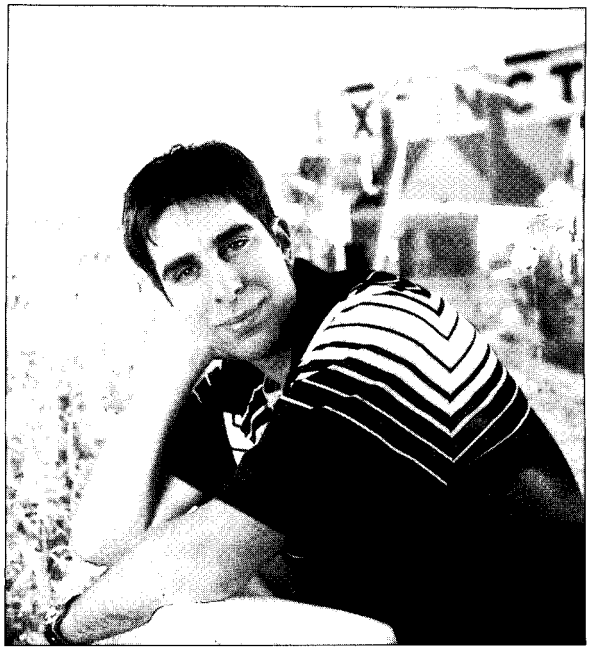
By Ronald Bailey

Act Now, Apologize Later, by Adam Werbach, New York: Cliff Street Books/HarperCollins, 307 pages, $25.00

He describes his college education as "just mental dildonics, fucking yourself with all the knowledge you've learned." He notes that the student film he made about Barbie concludes that the popular doll "is definitely not fuckable." And he says that he learns primarily "from the combination of cultures I'm immersed in, which is fashion, movies, and art."

Who is he? A young East Village person-in-black filmmaker wannabe? Perhaps a Venice Beach sun-and-surf-addled Hollywood hanger-on? No. He's the current president of the Sierra Club, Adam Werbach.

Notoriously, when baby boomers suffer midlife crises, they try to recapture their fading youth by ditching their old spouses for younger, hipper companions. Now we know that it happens to boomer institutions, too. In a bid to rekindle its youth-



Adam Werbach: The Sierra Club's wunderkind-in-charge lacks knowledge, experience, and analytic skills. On the plus side, he's callow, outlandish, and devoted to style over substance.

ful fire, the 105-year-old, 600,000-member Sierra Club's board of directors chose Werbach, a 23-year-old graduate of Brown University, as the group's president. Werbach had been elevated to the Sierra Club's board of directors at age 21 as the founder of the 30,000-member Sierra Student Coalition. He won a narrow 8–7 victory with the support of arch-environmentalist and board member David Brower.

Werbach's press notices assure us that he's a hip, cruelty-free vegetarian filmmaker with his own rock band. He's supposed to be very media savvy (after all, he has a degree in media studies and he likes MTV). And, you know, he just may be: Werbach did slap together this bunch of windy green platitudes and insipid stories about green heroes into a book which is being marketed on the notoriety of his two-year sinecure as the president of the Sierra Club. Sadly, it proves that this *enfant terrible* is green in more than just the environmentalist sense. But what the hell, taking the money and running is as media savvy as it gets.

Werbach began his career as an environmental activist at the tender age of 8 when he collected signatures in his Southern California second-grade class for a petition to oust then–Secretary of the Interior James Watt, for offering oil and gas leases in U.S. National Forests (not National Parks). Werbach has been at it ever since. He makes it clear that he is bored by the nitty-gritty details of science and economics. Heck, he just *knows* what's right. "I don't care why someone cares about the environment, only that they do," he writes.

"Cliff's Notes for the Unabomber" is the way a friend of mine described Werbach's book, but that's taking this intellectually lightweight tract far too seriously. According to Werbach, greenies just wanna have fun. In the spirit of Nike's "Just Do It" slogan, Werbach fills his book with simplistic catch phrases like "good kids draw outside the lines" and "it's easier to ask for forgiveness than permission."

Of course, the irrepressible Werbach is absolutely giddy about politics. His hero is his good friend, Vice President Al Gore. "I'm going to throw an outrageous party the night this guy takes over," gushes Werbach about Gore. Werbach hopes "the environment can serve as the issue that ignites a newborn faith in politics." He grumbles that Rush Limbaugh is "taking some of the joy out of politics," but he bravely takes up Limbaugh's challenge to name a federal government program that works (in fact, Werbach points to six—count 'em—six).

The list is instructive. He cites child labor laws—an arguable point, but old news since they were passed in the 19th century by *state* governments. He cites drinking water protections, which, like child labor laws, are both old news and off-target: Cities, without federal help, began filtering and chlorinating their water supplies more than eight decades ago. Then there's the Endangered Species Act, which Werbach claims saved the bald eagle (the national bird was actually saved by banning DDT—admittedly a federal initiative—but the ESA had nothing to do with it). He likes the Superfund program, which is in reality a full employment act for lawyers that has made cleanups vastly more expensive while doing little to protect either the environment or public health. He touts the phaseout of DDT in "1973" which he considers a deadly carcinogen (DDT has not been shown to be a carcinogen in humans, though the feds did ban it in *1972*). Rounding out his list of "successes" is America's National Parks. I like them too, but Werbach should read Alston Chase's *Playing God in Yellowstone* if he thinks the U.S. Park Service is managing them well. That's 0 for 6, the sort of batting average that gets a fellow sent back down to the minor leagues.

The reason that the Sierra Club board selected Werbach was to refurbish its image as an exclusive preserve for the white haute bourgeoisie. "The Club was mostly white and had a reputation for being a yuppie joint," admits Werbach. And despite all of the egalitarian blather he deploys, Werbach can't quite suppress the elitist disdain he shares with his Sierra Club elders for ordinary Americans. The book is littered with examples of eco-snobbery.

"For me, the wild quality of my community was the only thing worth saving," writes this former San Fernando Valley resident. "I'd be happy to see all of the boxy stores destroyed in the next quake." Translation: Look out, you low-life Angeleno shoppers! Or consider his praise for a plan to remove campsites, garages, a gas station, and hot dog stands from Yosemite Park: "People asked why we should remove these modern conveniences. I question how we could have built them in the first place. If you want stuffed animals, go to an amusement park," sniffs Werbach. Message: Only yuppie backpackers who can afford to hike for a week in the wilderness should be allowed in such cathedrals of nature. Along similar lines, he dismisses Wal-Mart as "a new breed of toxin." As Werbach sees it, the problem is that poor people are too attracted to the "convenience of row upon row of imported, low-quality junk—anything you might need for your work, home, or pleasure."

His alternative is a homey version of bioregionalism in which people should buy only locally made products. "We should demand that the Safeway in Idaho carry only native potatoes," declares Werbach. Like so much else in the book, this is incoherent on many levels, not least of

CATHERINE KARNOW

which is that potatoes are "native" to the Andes Mountains of Peru.

Werbach's lack of critical reflection shows up in other ways, too. "We need to be savvy, but we don't need to employ scare tactics and misleading information to communicate our message," he writes, even as he lards his pages with the usual litany of eco-horrors declaring that modern American civilization is poisoning kids, causing epidemics of cancer, warming the globe, and degrading the landscape. In fact, Werbach can't resist the standard-issue Gen X whining. "Our birthright is environmental devastation and a crumbling educational system—thank you very much, Mom and Dad," he writes.

What *can* he be talking about? Even he admits that the water and air are much cleaner than they were a couple of decades ago and that most of the pesticides that he regards as dangerous have been eliminated. If he would look around, he would find forests have been expanding since the 1920s, that people are living longer, that food and energy are cheaper and more abundant than ever before in history. But I guess he's more intent on proving his point about being a victim of "a crumbling educational system."

Werbach can't resist the standard-issue Gen X whining. "Our birthright is environmental devastation and a crumbling educational system—thank you very much, Mom and Dad," he writes.

Perhaps *Act Now*'s biggest howler is, "Environmentalists differ from private companies in that there is no direct self interest in our message." And just why do you think the Sierra Club board turned to a 23-year-old naif, if not as part of a desperate bid to bolster its sagging membership and falling budget? Certainly not out of self-interest.

Of course, it is certainly acceptable for a 23-year-old to express callow, outlandish opinions, to test the limits of propriety, and to elevate attitude over substance—indeed, such behavior is almost to be expected, if not encouraged. But the presumably intelligent and experienced adults who boosted him into this high-profile position ought to be ashamed of themselves. (Could California Social Services charge them with child abuse?)

Werbach recounts that he once "received a call from an irate C-SPAN fan. 'You kid,' [the caller] fumed, 'you're an ignorant, insolent, precocious, left-wing, pinky [sic], hippy, enviro-freak! What do you think about that?'

'Wow,' I paused a second to absorb it all, 'you learned all that just from seeing me for an hour on C-SPAN? You're pretty perceptive.'"

As this book clearly documents, the viewer was, indeed, quite perceptive. ◆

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Good-Will Hunting

By Allison R. Hayward

The Appearance of Impropriety: How the Ethics Wars Have Undermined American Government, Business, and Society, by Peter W. Morgan and Glenn H. Reynolds, New York: The Free Press, 272 pages, $25.00

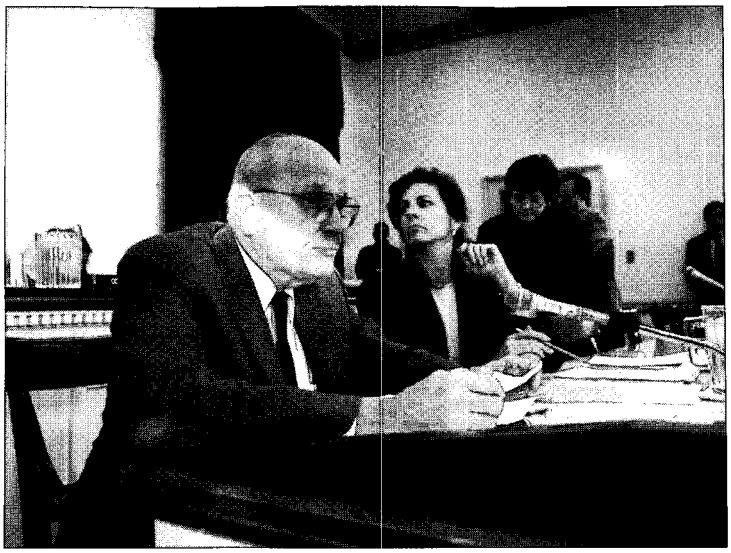
Can there be virtue in public service? For classical liberal critics of governmental power, it may be hard to envision how a person wielding state power could so much as pour morning coffee ethically. From such a perspective, public-sector ethics rules and regulations can be viewed as colorful bunting that works to obscure the cold marble edifice of the state. And yet, given that *some* form of governmental power is virtually inevitable, libertarians and fellow travelers should reflect seriously on the ethical hoops we make politicians, government bureaucrats, civil servants, public-sector contractors, and the like jump through. Since any use of the government's regulatory power should be consistent and justified by some good purpose, the fact that public ethics rules are often unwarranted and arbitrary is cause for concern.

The Appearance of Impropriety: How the Ethical Wars Have Undermined American Government, Business, and Society, by Peter W. Morgan and Glenn H. Reynolds, is a step in the right direction. As the subtitle suggests, this book makes a number of important points about the use and abuse of ethics rules in government and society, also addressing, among other issues, plagiarism investigations and the criminalization of ethics violations.

Morgan, a Washington, D.C.-based lawyer who has represented clients in federal criminal ethical investigations, and Reynolds, a law professor at the University of Tennessee, decry "appearance ethics"—that is, ethics rules that punish "looking bad" rather than "being bad." The authors maintain that the modern ethics regulation emphasizes petty rules and proper paper shuffling, rather than a careful examination of propriety. So, the U.S. Senate evaluates who has the right to office furniture purchased with excess campaign funds, "rather than [addressing] the undeniable conflicts of interest created by the donation and receipt of these funds in the first instance." They note that "appearance" rules not only fail to encourage good behavior but work to obscure the truth, making real reform difficult.

The authors provide a good discussion of the federal criminalization of practically everything—including broad and vague ethics standards—through wire fraud, mail fraud, conspiracy, and false statement crimes. They cite a 1990 estimate that 300,000 federal regulations are criminally enforceable. This figure includes federal ethics rules, many of which are complicated, riddled with loopholes, and difficult (if not impossible) to follow. (Anyone

doubting this should look at the Web site for the Office of Government Ethics, www.usoge.gov, which oversees the ethics programs of the executive branch.) The hazard is apparent, as Morgan and Reynolds point out: "Federal investigators and agency employees ask Americans about virtually everything these days. And virtually everything we say in response (sworn and unsworn, oral and written) is subject to federal criminal law. We remain relatively secure, however, because, again, federal prosecutors can't be bothered with prosecuting us...unless [we] amble a little further into the spotlight, questions are raised, and someone demands an investigation." The authors raise the question whether such complex and often arbitrarily enforced regulations discourage better people (who may lead more-complicated lives) from seeking careers in public service rather than those who tend to become craven masters of the system or undistinguished Milquetoasts.



Rep. John Dingell at a congressional committee hearing: Peter Morgan and Glenn Reynolds cite the Michigan Democrat's role in skewering a later-exonerated federally funded research scientist.

Contrary to many good-government types who invoke bland abstractions such as "public mindedness" and "civic virtue," Morgan and Reynolds argue that an effective ethics system must work in conjunction with individual self-interest: "Successful systems are...those where self-interested behavior by individuals and organizations produces behavior that is good for society. Unfortunately, the ethical system created by [post-Watergate reforms] is not such a system." Instead, the authors argue that these reforms serve the interest of the Ethics Establishment that sprang from Watergate: the good-government interest groups that agitate for restrictions; the journalists whose careers are made by breaking scandals; and the consultants and ethics officers whose paychecks depend on their sophisticated mastery of arcane ethics rules and regulations.

Morgan and Reynolds also discuss the role that the expansion of government plays in the growth of the ethics morass: "The growth of federal power increased the role of special interests because it made lobbying the federal government vastly more attractive....And a government that is the target of so much lobbying looks less trustworthy....[T]he prevalence of such special interest pressure has caused many Americans to fear, rightly, that many federal programs are simply disguised ways for the well-connected to pick their pockets, or otherwise push them around."

Unfortunately, while the authors' analysis of the state of ethics rules is generally accurate and provocative, they rarely devote enough pages to fully explore a given topic. While the book is not short, 272 pages are barely enough to scratch the surface of the broad and complicated issues under discussion. The results are often spotty.

For instance, Morgan and Reynolds discuss the damage to professional reputations caused by the reckless statements, tireless hounding, and strategic leaks of glory-seeking ethics enforcers. Specifically, they spend a few pages on efforts by the office of Rep. John Dingell (D-Mich.), once chairman of the Investigations Subcommittee of the Committee on Government Operations, and two prominent government researchers to skewer Thereza Imanishi-Kari, a Tufts University research scientist, who was accused and later cleared of falsifying lab results in a federally funded 1986 paper published in *Cell*. The case—a good example of how zealous politicos can use technical ethics rules to build their own careers by ruining the careers of others—deserves a more extended discussion.

The authors' too-brief treatment of the affair leads them to resort to *ad hominem* attacks rather than relying on convincing evidence. At one point, for instance, Morgan and Reynolds refer to Imanishi-Kari's antagonists as self-styled "fraudbusters" who previously pursued "undistinguished work researching the nervous system of snails." The authors also describe the professional damage endured by Nobel prize-winning scientist and Imanishi-Kari co-author David Baltimore. Baltimore's spirited (and later vindicated) defense of his co-author prompted criticism from Dingell's staff and some scientific colleagues (who were no doubt mindful of their own dependence on federal funding.) Eventually, Baltimore resigned his position as President of Rockefeller University in 1991.

Similarly, the authors touch upon what a nuisance the bounty-hunter character of the False Claims Act—which rewards informants who report "fraudulent" government contractors—has proven to be. They also observe that loopholes in the congressional gift rules permit regulated interests to continue to fund travel getaways for favored members. But such references are too abbreviated, leaving the reader with just a laundry list of inadequacies, rather than an in-depth understanding of particular circumstances.

Morgan and Reynolds argue that such rules prevent real reform. They say the gift restrictions, for instance, "prohibit our examining—much less attacking—the source of the ethical problem: the overwhelming degree of congressional dependence on the financial contributions from lobbyists' clients." Leaving aside for the moment that campaign contributions are regulated by a separate set of Byzantine laws, it remains unclear how congressional gift restrictions *prohibit* the punishment of bribery.

Perhaps more important, the solutions proposed in *The Appearance of Impropriety*

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are less than fully formed. Hence, as an alternative to "appearance" rules, Morgan and Reynolds encourage us to look at motive as the one legitimate ethical referent. But absent mind-reading capabilities on the part of ethics enforcers, it is hard to understand how this recommendation can be implemented.

In any case, the central ethical concern for the public seems to be that government officials apply uniform, well-known criteria fairly. Since we can't revisit every governmental decision to make a determination of motive, we recognize that some situations present a moral hazard that ordinarily skews the decision-making process. As a result, our laws view some acts as per se "bad": for example, granting government contracts to businesses in which one has personal financial interests. In some sense this approach focuses on "appearances," since we don't try to inquire whether the bureaucrat *meant* to line his own pockets. But "per se" rules have the virtue of providing clear criteria regarding what conduct is "bad" so that the decision maker—and any sycophants or privilege seekers—know what they can't do.

Morgan and Reynolds are silent regarding what substantive ethical standards they find legitimate. While they note that the present system elevates procedure over substance, they aren't ready to specify *how* an ethical public servant ought to behave. This is a frustrating lapse in analysis: It is not enough to assert that "right" and "wrong" should be self-evident—a number of postures that would be clearly "right" in a private context (e.g., returning friends' favors, helping family before others) are not acceptable when practiced by governmental officials.

The authors are correct that our present ethics system serves mostly as a tool for political advantage and a trap for the unwary. But ultimately, they do not make the case that the "appearance standard" is to blame, or that replacing it with a "motive standard" would provide a solution. In the case of the Imanishi-Kari scientific "witch hunt," for instance, a "motive" form of ethical regulation would not have saved her from enemies apparently willing to lie. Similarly, it seems unlikely that revising the "appearance" basis of many congressional ethics rules would reduce the number (or raise the quality) of complaints filed with congressional ethics committees. It is also far from clear that a "motive" standard would provide executive branch officials with sufficient guidance to order their daily activities. While *The Appearance of Impropriety* catalogues a number of valid ethical trouble spots, the solution it offers does not deal with the fundamental problems of imposing fair behavior in an administrative system that can exercise largely unchecked control over the smallest details of human activity.

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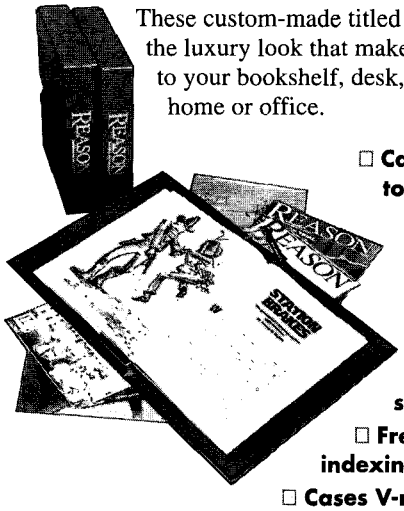

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Give Peace a Chance

By Loren E. Lomasky

Against Liberalism, by John Kekes, Ithaca: Cornell University Press, 244 pages, $29.95

Well, yes: against liberalism. But *which* liberalism: the ragtag package of nostrums, slogans, and mea culpas snatched from the wreckage of McGovernism and tended unto this day by the most feckless of the Kennedys; the egalitarian liberalism whose contemporary theorist of greatest renown is philosopher John Rawls; or the etymologically ancestral liberalism predicated on respect for the liberty of individuals to lead their lives according to their own lights? John Kekes, a professor of philosophy at the State University of New York at Albany, hasn't quite made up his mind, and that contributes to the disorder of his latest book.

Early on, he identifies the liberalism under discussion with "redistribution of wealth from the rich to the poor; graduated taxation; mandatory participation in the social security plan...multiculturalism; affirmative action...and the aggressive pursuit of these programs by the federal government." In fact, however, these prevailing fashions of the American left receive scant subsequent attention. Kekes has bigger targets in his sights, and the biggest of all are the three philosophers he presents as emblematic of the entire liberal tradition: John Locke, Immanuel Kant, and John Stuart Mill. What is common to them (and their various liberal successors) is allegiance above all else to an ideal of personal *autonomy*.

Willful misrepresentation of liberal ideas has become a conservative growth industry, so this volume may be graciously welcomed by *The Weekly Standard* and mincing denigrators of the *I* word.

Within a liberal political order, Kekes contends, autonomy—literally "self rule"—is given a clearer meaning and promoted by assigning paramount status among potential human values to freedom, equality, rights, pluralism, and distributive justice. For Kekes, the problems alleged to plague liberalism arise from two related structural sources. First, these liberal values can and often do conflict with other similarly weighty values—for example, security, prosperity, and health. When such collisions arise, he says, there is no good reason to suppose that the preferred liberal values shall automatically take precedence. Second, Kekes contends that liberalism is internally inconsistent. He rightly notes that liberals espouse *value pluralism*, meaning thereby that there is not some one way of life or package of goods that always and everywhere takes precedence over all others. Yet by insisting on a liberal order as the uniquely optimal basis for civil life, Kekes argues that liberals enshrine their own set of canonical values (freedom, equality, rights, etc.) as regulative for *all* societies. Professed pluralism thus collapses into absolutism: a contradiction.

This is too abstract to carry the day, so Kekes attempts to buttress his case by spotlighting specific anomalies. Liberals, he says, are woefully naive concerning the prevalence of *evil* in human affairs. The moral landscape we jointly inhabit is disfigured by all too many people who, acting from very bad characters, perpetrate manifest evils. Quashing the toxic designs of these evildoers requires severe encroachment on their freedom to perpetrate harms, argues Kekes, yet liberal veneration of autonomy precludes such a course. Rather, liberals' theoretical blind spot leads them to maintain that all moral evils are the product of non-autonomous choices. The liberal prescription for combating evil, then, is to render people more autonomous by educating them, affording them an ample supply of welfare goods, and making readily available to them a range of constructive choices. Such liberal naiveté Kekes maintains is not only implausible; it is contemptible.

With that assessment I heartily concur. But just who are the liberals who fall under such an indictment? I suppose that within the far-left precincts of the Democratic Party there are a few who qualify—though even in those musty caverns the number is diminishing. But it surely does not apply to those whom Kekes himself identifies as the prototypes of liberal philosophy. For instance, in his *Second Treatise on Government*, Locke notes the sad but inescapable fact that some individuals will choose to act as rights-violating predators. Against such threats to pacific coexistence, Locke argues, every person in the state of nature possesses an executive right of punishment, including authorization to kill or enslave enemies of the peace. With the coming of civil society that right may be centralized in the state apparatus, but it neither disappears nor is in any way diminished.

Kant is notorious for his insistence on an indefeasible duty to punish lawbreakers, holding capital punishment not only permissible but mandatory. And as is well-known, Mill limits his "one simple principle" of liberty to "self-regarding" actions, stating that encroachments on the well-being of others are legitimately proscribable. In short, the liberal naiveté that Kekes identifies is the creation of his own far-fetched reading of this tradition. Equally unsubstantiated is his identification of a "liberal faith" in the goodness of all human beings. "From the crooked timber of humanity," Kant famously wrote, "no truly straight thing can be made." Locke and Mill offer similar cautions. So much for alleged liberal "Pollyannas."

Another flaw of liberalism, complains Kekes, is that its egalitarian message is not sufficiently attentive to morally relevant differences between good and bad persons. If each citizen is to be guaranteed the same amount of what Rawls calls "primary goods"—those all-purpose resources such as opportunity, income, and wealth that are valuable whatever one's particular conception of the good—then tawdry or vicious designs will enjoy the same level of state support as do morally worthy ones.

In this respect too, says Kekes, liberalism is blind to the fundamental ethical divide separating better from worse. This criticism has some bite against egalitarian liberals.

But Kekes's charge has no force whatsoever against the classical tradition of liberalism, within which all men are proclaimed to be equal with regard to their basic *rights*, not their bank account balances. Classical liberals do not insist on redistributing from good to bad individuals. Kekes may respond that neither do they insist on redistributing from bad to good. That is correct, but to infer from such restraint an obliviousness among liberals to distinctions between good and evil is blatantly fallacious. Liberalism is a theory not of "value-free government" but of *limited* government. More specifically, it is founded on a conception of a division of moral labor within which the state occupies the narrow but crucial role of upholding the rule of law, thereby vindicating persons' basic rights. The task of formulating and pursuing conceptions of the good is decentralized to individuals acting in their private capacity. This division of labor is meant not to diminish the magnitude of the gulf between good and evil but rather to mark it off as too portentous and too personal a concern to be consigned to the broad brush of a one-size-fits-all centralized apparatus.

I believe this to be the single most important respect in which liberalism represents a genuine advance over older theories of political governance. Plato and Aristotle took for granted the pedagogical function of the *polis*, the idea that it is the job of the state to inculcate and enforce across the populace a unitary ethical norm. So too, in their respective ways, did the Grand Inquisitor, Robespierre, Stalin, and the Ayatollah Khomeini. Liberals from Spinoza and Locke to Berlin and Rawls have announced themselves opposed to this tradition of totalizing politics. Kekes may coherently (though not, I believe, correctly) claim that this is a defective politics, but to decry it as inattentive to differences between good and evil is itself an instance of remarkable inattentiveness.

Kekes's primary error, from which most of the rest follow, is his supposition that the central preoccupation of liberals is autonomy. Although the contemporary literature of moral philosophy is awash with devout invocations of a vaguely specified ideal of autonomy—it is the profession's equivalent of mom and apple pie—this is only one corner, and by no means the most fruitful, of current liberal theory. Despite autonomy's vogue, it is of no more than marginal relevance to the tradition of liberalism. For the founders of liberal theory it is not autonomy but *peace* that occupies the philosophical focal point.

Locke, for example, knows nothing of autonomy. Rather, in his conception, civil order remedies the manifold "inconveniences" of the state of nature which ever tip it in the direction of the state of war. For Kant, autonomy is indeed the *sine qua non* of moral worth, but its pursuit is not the business of the state. So little is politics the soil on which autonomy is sown and moral goodness harvested that, proclaims Kant in one of the most striking passages in the entire literature of liberalism, "As hard as it may sound, the problem of setting up a state can be solved even by a nation of devils (so long as they possess understanding)." His proposed solution is a civil order in which individuals enjoy maximum external freedom consistent with a like freedom for all others. This structure is designed to ensure only that people—and devils—don't bump into each other too hard or too often, but it is on that modest foundation that all the excellences of social existence are grounded.

Mill's stance is similar. He is a great enthusiast for autonomy (the term he uses is *individuality*), but he repeatedly insists that individuals enjoy perfect liberty to order their affairs to their own liking so long as they do not thereby usurp the prerogatives of others. Mill loathes conformism, but he nonetheless defends the rights of individuals to select for themselves lives of submissiveness or superstitious obeisance. He cites Mormon polygamy as an example of a manifestly inferior "experiment in living" in which, however, individuals ought to be left at liberty to enroll themselves. (The U.S. Congress saw things differently, requiring polygamy to be outlawed as a condition for Utah's statehood in the late 19th century.)

Kekes is not a philosopher devoid of talent, and from time to time his discussions repay the reader's attention. The best section of this book is his brief for the seemingly unpromising concept of collective responsibility; liberals would do well to mull over the considerations adduced there. Unfortunately, few will be willing to pay the price of wading through the stylized demolitions of straw men that precede and follow it.

In an afterword, Kekes mentions that he intends a sequel in which he will advocate the cause of a pluralist conservatism. That announcement places *Against Liberalism* in a familiar genre. Willful misrepresentation of liberal ideas has been a conservative growth industry over the past several decades, so this volume and its successor may be graciously welcomed by *The Weekly Standard* and mincing denigrators of the *l* word. But those whose tastes run more to accurate, dispassionate political philosophy will perforce look elsewhere.

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Dirty Dozen

Twelve ethical legacies of the Clinton presidency

By Thomas W. Hazlett

President Clinton is casting about for his legacy. When you look at his accomplishments—rescuing Haitian democracy, resurrecting George Bush's five-year budget plan, saving Social Security and Medicare from reforms that might unfairly slash the tax rate for future Americans below 84 percent—you've got to marvel at how the whole system just keeps on purring. Indeed, since November 1994, the Dow has increased from under 4,000 to around 8,000, arguably the greatest bull run in history. And no one can say that Clinton wasn't the magician who produced the impossible: a Republican Congress.

But Clinton will be remembered for even more profound changes: He has redrawn the rules of the political game itself. It used to be that if you got caught redhanded, you were ashamed—and you were gone.

Thanks to Clinton, however, disclosure of unethical behavior—from a $100,000 bribe for then–Gov. Clinton laundered through Hillary's pork bellies account, to shaking down Indian tribes for campaign cash, to a national security adviser's failing to unload stock shares that violated ethics rules, to a sitting president's breaking campaign finance laws by agreeing to set aside $1 million to pay Federal Election Commission fines (signing off on the memo with a most descriptive "ugh")—just doesn't pack the same wallop. Clinton's ability to bob and weave—and to let his opponents punch themselves out—has allowed him to lead "the most ethical administration in history" by a revolutionary moral standard.

Here's a brief synopsis of Clinton's *ethical* legacy, a string of rationalizations for opportunism which have turned humiliation into ho-hum.

1. *No controlling legal authority.* You laughed—but it worked! Despite the testimony of one irate Democratic mark who dubbed White House-based phone calls a "shakedown," this was the fig leaf our Accomplice General Janet Reno donned to let the vice president *and* the president slide after violating the plain language of the statute prohibiting fund raising on federal property.

2. *Personal foibles are off-limits.* The press now dutifully reports that "womanizing" (expansively defined to encompass on-the-job solicitation of subordinates) is a matter of personal preference—a private issue for the First Couple. But, alas, these politicos keep pushing their family stories on us. These days, Bill boasts of Chelsea no less than Hillary, and who can forget tobacco farmer Al strategically recounting his sister's cancer death at the Democratic Convention in '96?

3. *Who cares about Arkansas?* There's a brand new statute of limitations: If you get elected president, all crimes committed prior to the election get wiped clean. Poor Spiro Agnew, getting busted on that petty theft as governor—of a small Southern state, no less.

4. *Even if we did sell access, contributors weren't given anything of value.* Donors like Roger Tamraz, various Indian tribes, and Johnnie Chung (who likened the White House to a toll gate) tell a different tale. The administration claims that the influence seekers who forked out millions to the Clinton-Gore '96 effort were just plain suckers. Right. And Al Capone was a legit businessman who just forgot to pay his taxes.

5. *According to the polls, no one cares about political scandals.* A groundswell of concern cannot logically *precede* revelations of skullduggery. The media must first expose and excoriate the banditos—which they have not done, citing the lack of public interest!

6. *It's the economy, stupid.* The received wisdom is that the citizenry is fat and happy: Why care about political shenanigans when fourth quarter GDP growth is above 3 percent? If only the Teapot Domers had thought of that.

7. *These charges of wrongdoing are thinly veiled attacks by Republican partisans!* Excellent point—as is the precisely opposite point that charges of Republican partisanship are pure Democratic partisanship.

8. *The bumpkin defense.* In violation of every administrative protection an innocent citizen has against his government, 900 FBI files are purloined and quarantined in the office of a political dirty trickster in charge of opposition research. Clinton's winning defense: It was just an "honest bureaucratic snafu."

9. *All this illegal fund raising proves the need for campaign finance reform.* Swallowed whole by the "watchdogs" of the press, this line suggests more than an "honest bureaucratic snafu." It declares: *Passing* laws is the business of government—not abiding by them.

10. *Everybody does it.* There's not a teenager in America who hasn't tried this one, but usually only those who grow up to be featured on *America's Most Wanted* actually get away with it.

11. *It's nothing like Watergate.* Well, *Watergate* was nothing like Watergate until people talked, subpoenas were answered, and the tapes played.

12. *Prove it!* As indictments and convictions mount, big shots above the Webb Hubbells and Mike Espys remain tough nuts to crack, especially when a code of silence kicks in. As FBI Director Louis Freeh observed last year during campaign finance hearings, he had seen so many witnesses flee the country or take the Fifth only once before in his career: when looking into organized crime.

The president promised to bring the American people change. Promise kept. Legacy claimed.

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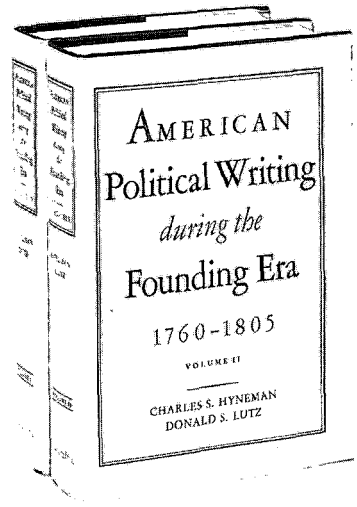

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